

JUDGMENT WRITTEN BY HER WORSHIP EUNICE A. APELIWEN (MRS) AND DELIVERED ON HER BEHALF BY HER WORSHIP CYNTHIA.A. ANDY AT THE DISTRICT COURT, BREMAN ASIKUMA IN THE CENTRAL REGION OF THE REPUBLIC OF GHANA ON TUESDAY THE 8TH DAY OF NOVEMBER, 2022.

SUIT NO: A1/11/2021

GEORGE YAMSON & 2ORS PLAINTIFF

VS

KWAME NYARKOH & ANOR DEFENDANT

JUDGMENT

The Plaintiffs filed a writ for the following reliefs:

1. Declaration of title and ownership of a piece of land measuring about 4acres located at a place called Ahweresugya within the vicinity of Breman Kokoso. The land shares boundaries with Opanyin Kwaahen, Kwaku Tarkwa, Auntie Bea and Opanyin Kwaku Yeboah.
2. Recovery of possession of the disputed land.
3. Order for the removal of all crops, structures and properties put on the land by the Defendants, their assigns, privies, relatives, agents, and labourers as well as all those claiming the land through them.
4. Order for perpetual injunction restraining the Defendants and all who may deal with the land on their behalves.

5. Order for recovery of cash sum of GHC710.00 (Seven Hundred and Ten Ghana cedis) being the value of coconut on the land, the property of 1st Plaintiff destroyed by the Defendants.
6. An order for the recovery of cash sum of GHC500 (Five Hundred Ghana cedis) being the value of maize, plantain and cassava planted on the land destroyed by the Defendants.

The Defendants pleaded not liable to all the claims and went ahead to counter claim.

In the joint statement of claim of the Plaintiffs, they said the disputed land was a virgin forest that their grandmother Ekua Efaah and her husband broke and cultivated cocoa on the entire land. She died and was succeeded by an uncle of the Plaintiffs called Opanyin Kwame Owusu. The successor continued to maintain the cocoa farm until about half of the entire land area had the cocoa trees dying because of too much water on that portion of the land. That portion of the land was then released to one Opanyin Yeboah to cultivate palm trees to be shared. The palm trees farm was duly shared between Opanyin Kwame Owusu and Opanyin Yeboah. Opanyin Kwame Owusu died and was succeeded by his brother, Opanyin Kwabena Nkrumah.

He also took over the cocoa farm on one portion of the land as well as the shared palm trees. That because Opanyin Kwabena Nkrumah was working in Tamale he asked Plaintiffs' mother (Efua Gyamfi) to be the caretaker of the land. She continued to take care of the cocoa farm until it withered out. She informed Kwabena Nkrumah her intention to give that portion of the land out for only yearly crops of which Kwabena Nkrumah agreed. The land was then given to Opanyin Yamoah until such a time that Efua Gyamfi could cultivate cocoa on it again. The palm trees on the other portion of the land had grown old so she sold all the trees out for alcohol distillation. Opanyin Yeboah also sold his palm trees and the land reverted to the owner (customary successor) Opanyin

Kwabena Nkrumah under the care of Efua Gyamfi, mother of Plaintiffs. The land was once again given to a Priest of the Methodist Church to cultivate palm trees for them to share. As the successor was away, Plaintiffs' mother (Efua Gyamfi) continued to be the caretaker. Later Opanyin Nkrumah fell sick and had to be brought home. Money was needed for his treatment. Opanyin Nkrumah's portion of the palm plantation was sold to the Methodist Priest. Once again, the palm trees became old, and the Methodist Priest sold the trees and the land reverted to Op. Kwabena Nkrumah.

Opanyin Kwabena Nkrumah died and was succeeded by Efua Gyamfi, mother of Plaintiffs who took over the land in dispute as the customary successor. The mother of Plaintiffs also died, and 3rd Plaintiff succeeded and took over the land in dispute. She does not live within the community where the land is located so she asked her elder brother (2nd Plaintiff) to be the caretaker of the land.

As the town grew and got closer to the land, people started showing interest in acquiring portions of the land to build. The 2nd Plaintiff without the consent of the 3rd Plaintiff (customary successor), started selling portions of the land. The 1st Defendant being a member of Plaintiffs' family (with a different mother) informed 3rd Plaintiff about the actions of 2nd Plaintiff during a funeral she attended in town. The 3rd Plaintiff then asked 1st Defendant to become the caretaker to avoid the continuous sale of the land by the 2nd Plaintiff. The 1st Defendant then took advantage of his presence on the land and started acting as the owner of the land. The 1st Plaintiff went to plant maize, cassava and other crops on the land but 1st Defendant uprooted everything on the land and cultivated the land, when asked by 1st Plaintiff, 1st Defendant said he want to build on that portion of the land. The 1st Defendant has gone ahead to give a portion of the land to 2nd Defendant and preventing the Plaintiffs access to the land. Plaintiffs insist that the disputed land is never the property of the Defendants and asked for the reliefs stated.

During cross examination, 1st Plaintiff said their grandmother (Ekua Efaah) was a sister to the grandmother of the Defendants and that they were 4 siblings with Plaintiffs' grandmother being the 2nd child while Defendants' grandmother the 3rd child. The 1st Plaintiff said the land in dispute is not a family land. The reason being that their grandmother met her husband who had come to their hometown, and they got married. He insists that the land in dispute was acquired by their grandmother and as a child visiting the land, he was never told the land shares boundary with an elder sister of their grandmother and never see any other family member on the land in dispute except descendants of their grandmother. The 1st Plaintiff added that he was always going to the farm with her grandmother Ekua Efaah carrying her stool for her. That Ekua Efaah used to sit on a stool to weed. The 1st Plaintiff indicated that there was no conclusion when their head of family attempted settling the matter. The 1st Defendant and his nephews became angry and even insulted the elders and left the meeting. The 1st Plaintiff said the presence of one Akua Addae on a portion of the land was with the permission of their mother (Efua Gyamfi). That he has never seen Defendants' mother or grandmother on the disputed land. Whoever came unto the land was there with the permission of the descendants of Ekua Efaah. It was because 2nd Plaintiff was selling the land that 3rd Plaintiff asked 1st Defendant to see to it that 2nd Plaintiff does not sell any portion of it again. That is how come Defendants went to be on the disputed land.

In the evidence of Kojo Yamoah (PW1), he said in the year 1983, Plaintiffs' mother who was the owner of the disputed land approached him for money and gave the land to him to farm. He was on the land for 5 years without any interference from anyone. He left the land for the owner thus Plaintiffs' mother. He is aware that after the death of Ekua Gyamfi 3rd Plaintiff was made the customary successor and hence took over the land.

During cross examination, witness said Efua Gyamfi, mother of the Plaintiffs asked him to farm on it as a tenant farmer after he had paid some money to her. That his farm was never burnt during the severe drought that caused fires in 1983 in the country.

The 2nd witness (Kwaku Budu) of the Plaintiffs said, his stepfather was given a portion of the disputed land from an elder brother of his biological father (uncle) to farm in 1976 and planted palm. He used to visit the land with his mother. He was then told by his mother that the land belongs to his father since the virgin forest was broken by the grandmother Ekua Efaah (father's mother) who is also the grandmother of the Plaintiffs. He was later asked to farm on the disputed land by an elder brother of his father, but Plaintiffs mother objected to it as there were cocoa trees on it. He was later given a small portion of the land to farm. He left the farm and travelled only to return and saw that Plaintiffs' mother had given the land to one Kojo Yamoah to cultivate palm. He corroborated the evidence as to the succession of the disputed land.

During cross examination, witness indicated that Opanyin Kwame Owusu was the son of Ekua Efaa and his father. Therefore, Ekua Efaah was his paternal grandmother. He was informed that the land in dispute was for his paternal grandmother. He also insisted that, the husband of Ekua Efaah assisted her to acquire the land in dispute. He was never worried when his father could not give him a portion of the disputed land as he gave him a different land.

In the statement of the 3rd witness (Thomas Obeng Yeboah), he said when he returned home from Libya, he was given a piece of land that shares boundary with the disputed land by his cousin in the year 2000. He knows that when the mother of Plaintiffs died, 3rd Defendant succeeded her. That the 3rd Defendant is the custodian of the land in dispute and has asked her brother 2nd Plaintiff to take care of it. That until recently that

the Defendants are claiming ownership of the land, the Plaintiffs have never had any interference from any one over the land.

During cross examination, witness said 1st Defendant came to weed on a piece of land, but that land does not form part of the disputed land. He also said the disputed land does not share boundary with the two streams there but that the stream forms part of his father's land.

In the evidence of Plaintiff's 4th witness filed, he said the land in question was a virgin forest when the grandmother of Plaintiffs called Ekoa Efaah and her husband acquired. Upon her death, Kwame Owusu succeeded her. That in the course of time Kwame Owusu died and was succeeded by Kwabena Nkrumah who was also succeeded by Efuah Gyamfi the biological mother of Plaintiffs. Upon the death of Efuah Gyamfi, the 3rd Defendant Florence Yamson became her successor. The successor then asked 2nd Plaintiff Peter Yaw Kra (elder brother of 3rd Defendant) to be the caretaker of the land as she was living outside the jurisdiction. He has known the Plaintiffs to be on the disputed land all these years after the death of the mother.

During cross examination, the witness said he has been on his land for over 40 years but never saw the Defendants or any of their family members on the disputed land. It was his uncle Opanyin Yeboah who told him the land in dispute was for Opanyin Kwabena Nkrumah who had travelled. That his uncle asked him to protect the land for the owner and that when Opanyin Kwabena Nkrumah comes he should show him the boundaries. He was on the disputed land in 1983 but never saw 1st Defendant on the farm.

In the defence statement and counter claim of the 1st Defendant, he claims both parties are from the same Twidan family of Breman Kokoso and descendants of the same great

grandmother. That both Kwabena Nkrumah and Kwame Owusu were common granduncles and uncles for both parties. That the mother of Plaintiffs (Efua Gyamfi) succeeded the mother of Defendants (Adwoa Oduraa) in 1990. The name of their common grandmother was Ntifoaa who gave birth to three daughters and a son, Korangtemaa, Ekua Efaa, Afua Nyarkoaa and Budu. That Korangtemaa who was the 1st daughter of Ntifoaa had a portion of the land carved out for her. The other two daughters thus grandmother of Plaintiffs (Ekua Efaa) and grandmother of Defendants (Akua Nyarkoaa) were tenants in common on the disputed land with their descendants. The land in dispute originally belonged to and was farmed by the descendants of both Ekua Efaa and Akua Nyarkoaa. The Plaintiffs have taken over all the ancestral lands including a house. That since the Plaintiffs have taken over all the ancestral lands, the land in dispute now belongs solely to the descendants of Akua Nyarkoaa. He was informed by his sister that some people were on the land and when he approached them, they indicated that the land was sold to them by the Plaintiffs. He asked them to stop building but one developer refused and continued building so he went and pulled down the structure which ended at the police station. He was asked to compensate the developer which he did. Both Defendants and Plaintiffs met with the elders of their family and the issue of the ownership of the land settled. The Plaintiffs were asked to take a portion of the land which has cocoa whiles the Defendants take the other portion. He and his siblings started working on the land in dispute. He later went unto the land with his nephew and saw that someone had planted coconut seedlings dividing the land in dispute. They uprooted the coconut seedlings and 1st Plaintiff came there with some guys and started beating them. He got injured and reported to the police. The father of Plaintiffs intervened and asked that the matter be settled at home. The 1st Plaintiff was asked not to go unto the disputed land again. Since 2019, he and his siblings have been working on the land peacefully until Plaintiffs caused a writ to be served on them. The 1st Defendant denied destroying any crops of the Plaintiffs on the land.

The 1st Defendant counter claimed as follows,

1. A declaration that the entire land at Ahweresugya belongs to both the descendants of Ekua Efaa and Afua Nyarkoaa.
2. A declaration that the fact that Plaintiffs have taken over all the ancestral lands without giving any portion to the Defendants and his siblings does not make them as sole owners of disputed land.
3. An order directed at the Plaintiffs to render account of the proceeds of the cocoa from 2009 to date.
4. A declaration of title in respect of the land in dispute in favour of the Defendants and their siblings as their share of the land.
5. A perpetual injunction restraining the Plaintiffs and their privies, agents, assigns and all those claiming through them from ever interfering with the Defendants' ownership, possession, and quiet enjoyment.
6. Any other reliefs the court may deem just.

During cross examination, 1st Defendant said his mother (Adwoa Oduraa) was also on the disputed land at the time the mother and uncles of Plaintiffs were also on the land. He stopped 2nd Plaintiff from selling portions of the land and asked 3rd Plaintiff to warn him. He said the land in dispute shares a common boundary with a stream and that he did not call persons who share boundaries with the land to testify because they are all dead. He however failed to provide answers to why he did not call the children of the dead boundary owners to testify. He claimed he chased out a man whom Plaintiffs sold a portion of the land to but later had to sell the land again to that person though he did not execute any document with the buyer of the land. He alluded to the fact that he destroyed the coconut seedlings on the land the reason being that, the disputed land is his. That, his mother and sisters have been on the disputed land before he took over. That Plaintiffs' mother planted cocoa on a portion of the land, but his mother only had cassava

and plantain. 1st Defendant also indicated that he was not in town when one Kwaku Anim took a portion of the land to plant citrus but his mother together with the mother of Plaintiffs confronted him. That during the lifetime of OP. Yaw Donkor and Kwabena Nkrumah, they both had their separate lands and that Op. Yaw Donkor never contested with Kwabena Nkrumah over the disputed land. He said the land from Yaw Donkor was a gift to his sisters due to the service they rendered to him but the land in dispute is for the entire family hence the litigation. He cannot tell what Budu (son of Ntifoaa) did on the disputed land. The 1st Defendant also alluded to the fact that at the time 2nd Plaintiff sold portions of the land to people, he was not on the land. The 1st Defendant insist that he was not made a caretaker of the disputed land, but the land belongs to the entire family.

In the witness statement of Kweku Baah (Defendant's witness), he stated that the disputed land was the property of Ntifoaa great grandmother of the parties who died and was succeeded by her four children: Korangtemaa, Ekua Efaah, Ekua Nyarkowaa and Budu. He stated that Korangtemaa being the eldest child of Ntifoaa was given land curved out of the disputed land, the rest of the children of Ntifoaa were given the disputed land to farm. Budu together with his sisters, Akua Nyarkowaa and Ekua Efaa also died and were succeeded by their uncle Kwame Owusu. That Kwabena Nkrumah and the children of both Ekua Efaah and Efaa Nyarkowaa became the customary successors to Kwame Owusu after his death. Plaintiffs occupied a portion of the land that had cocoa while the Defendants had the other portion. He later heard that Plaintiffs have been selling the portion of the land belonging to the Defendants which brought about a misunderstanding between them. The head of family invited the parties and settled the matter and asked that they go to the land and demarcate. When the team was ready to visit the land with the parties, both parties told them that they have settled the matter so there was no need to visit the land again. He later heard that there has been an issue again

between the parties which ended at the police station. The matter was later settled at home with the help of Plaintiffs' father.

During cross examination, he said he got to know the land when he was 20yrs old. That a sister of the Plaintiffs Georgina Yamson was on it planting cocoa on one portion while the other portion was a secondary forest. He also confirmed that about 40yrs ago, Opanyin Kwame Owusu gave the land to someone to plant palm trees. He also saw Kwabena Nkrumah on the land with his wife farming. That he was asked by the head of family to go and share the land between the parties, but the parties said they can resolve the issue themselves.

In the witness statement of Yaw Botwey (Defendants witness), who claim to be the family secretary corroborated the evidence of the 1st witness.

During cross examination, he said he is the family secretary and that the issue over the land was resolved by the head of family. He also indicated that the land shares boundary with a stream as there is no land between the stream and the land in dispute.

In the witness statement of Andrews Kwakye (Defendant's witness), he corroborated the story of the other two witnesses.

During cross examination, he claims he has been on a portion of the disputed land for only two years. He has not seen any house build on a portion of the land.

In the witness statement of Margaret Mensah (Defendants witness), she also corroborated the statement of the other witnesses.

During cross examination, witness said both parties have had their farms at the same land even when Plaintiffs mother was alive. She claims her mother Adwoa Odurowaa planted the palm trees on the disputed land. that the palm trees planted by Kwame Owusu became old and were uprooted. Then her mother gave the land to someone to

plant palm trees again. She has no idea that Kwabena Nkrumah also planted palm trees on the land. That the palm trees planted by her mother were fell about 5years ago (there was no mention of Defendants' mother planting palm trees on the disputed land which were fell about 5years ago. This is an afterthought.

FACTS AS DEDUCED FROM THE EVIDENCE OF THE PARTIES AND THEIR WITNESSES.

1. The land in dispute as both parties have indicated is about 4acres.
2. It is a fact that Plaintiffs' mother (Efua Gyamfi) is not a biological sister to Defendants' mother (Adwoa Oduraa).
3. Efua Gyamfi's mother (Plaintiffs' grandmother Ekua Efaah) was a sister to Defendants' grandmother (Efuah Nyarkwaa). Their mother was Ntifoaa (thus great grandmother of both parties)
4. Opanyin Kwabena Nkrumah and Kwame Owusu were siblings and brothers to Plaintiffs' mother Efua Gyamfi.
5. Kwame Owusu and Kwabena Nkrumah are not the direct uncles of the Defendants.
6. The direct uncle of the Defendants was Opanyin Yaw Donkor who had a separate land from that of the disputed land. whiles Opanyin Yaw Donkor was on his land, Opanyin Kwabena Nkrumah was on the disputed land and there was no dispute.
7. The land occupied by Opanyin Yaw Donkor is currently being occupied by the Defendants without any interference from the Plaintiffs.
8. Plaintiffs are the direct nephews and niece of Kwame Owusu and Kwabena Nkrumah.
9. It is a fact that, parties especially the Defendants could not indicate clearly who become the successor of Ntifoaa.

ISSUES FOR DETERMINATION INCLUDE THE FOLLOWING;

1. Whether or not the Plaintiffs have provided enough evidence to be declared as having title to the land in dispute
2. Whether or not a perpetual injunction should be ordered restraining the Defendants and all who may deal with the land on their behalves from interfering with it.
3. Whether or not Plaintiffs have proven that indeed Defendants caused damage to their crops on the disputed land.
4. Whether or not the disputed land should be declared as belonging to the descendants of Ekua Efaa and Ekua Nyarkowaa as indicated by Defendants in their counter claim.
5. Whether or not the Defendants per their counter claim be declared as having a better title to the disputed land.

WHETHER OR NOT THE PLAINTIFFS HAVE PROVIDED ENOUGH EVIDENCE TO BE DECLARED AS HAVING TITLE TO THE LAND IN DISPUTE.

The standard burden of prove in all civil matters before the court is clearly stated in the **Evidence Act NRCD 323**. The Act has it that ‘the burden of producing evidence requires a party to produce sufficient evidence so that on all the evidence a reasonable mind could conclude that the existence of the fact was more probable than its non-existence¹. The Act also has it that ‘the burden of persuasion requires proof by a preponderance of the probabilities’². These two sections of the **Evidence Act NRCD 323** puts a responsibility

¹ Section 11(4) NRCD 323

² Ibid 12(1)

on a party who asserts to give enough evidence that the mind of the court will not have any reason to doubt the evidence given. This evidence is measured by the preponderance of the probability.

In **Nartey v Mechanical Lloyd Assembly Plant Ltd**³ Adade JSC the astute judge stated that “a person who comes to court, no matter what the claim is, must be able to make a good case for the court to consider, otherwise he must fail”. The Plaintiffs have the duty to make a good case else their case fails. In land matters, the court is always mindful of the kind of evidence given by the parties when it comes to declaration of title to land. It is so crucial that the party claiming title will have to satisfy the court with the boundaries of the land he/she want to be declared as his /hers. The position of the law as was decided in the case of **Tetteh v Hayford**⁴ is **that it is the Plaintiff who bears the burden of establishing the identity of the land she is laying claim to**. Failure to prove the identity is fatal to a claim for declaration of title.

Again, in the case of **Fofie v Wusu**⁵ it was held that; **“to succeed in an action for a declaration of title to land, a party must adduce evidence to prove and establish the identity of the land in respect of which he claimed a declaration of title”**. The burden to identify the land in dispute before the court lies with the Plaintiffs. In the evidence of the Plaintiffs, they indicated the boundaries of the land to be that, it shares common boundaries with Opanyin Kwaahen, Kwaku Tarkwa, Auntie Bea and Opanyin Kwaku Yeboah. Again, the Plaintiffs called upon one of the persons that, the land shares boundary with to testify that is Plaintiff 3rd witness Thomas Obeng Yeboah. The witness said he was given a piece of land in the year 2000 which shares boundary with the disputed land. He went further to state that, he has never seen the Defendants on the land

³ [1987-89] 2 GLR 314

⁴ [2012] 1 SCGLR 417 at 426

⁵ [1992] GBR 877 CA

in dispute but rather the mother of the Plaintiffs was seen on the land until she died and 3rd Plaintiff took over. That since 3rd Plaintiff is not within the community, 2nd Plaintiff has been in charge of the land.

After the boundaries have been established the Plaintiffs have the burden to declare their root of title to the land in dispute. In the evidence of both parties, they indicated that they are not the original owners of the land. this means the Plaintiffs will have to prove their root of title in order to have a ruling in their favour. In the case of **Ago Sai & others v Kpobi Tetteh Tsuru⁶ Ansah JSC stated that “..... this being an action for a declaration of title to land, the burden of proof and persuasion remained on the Plaintiffs to prove conclusively, that on a balance of probabilities, the essentials of their root of title and method of acquiring title to the area in dispute,.....’**. In the joint statement of claim of the Plaintiffs, they gave a detailed story as to how they came to be in possession of the disputed land. They Plaintiffs’ claim the disputed land was acquired by their grandmother Ekua Efaa with the help of her husband. The 1st Plaintiff said he used to go to the farm with her grandmother when he was 4years old. He used to carry his grandmother’s stool to the farm as she used to sit on the stool to farm. He also went ahead to indicate the line of succession by indicating that Kwame Owusu a son of his grandmother became the successor and took over the land in dispute. Kwame Owusu planted palm trees on the land. He went further to say that his uncle Kwabena Nkrumah succeeded Kwame Owusu and took over the land. he also had palm trees on the land after the ones Kwame Owusu planted were uprooted. The mother pf the Plaintiffs was made the caretaker of the disputed land by Kwabena Nkrumah as he was away from home. So, the planting and replanting of palm trees on the land was done by Plaintiffs’ mother with the permission of the customary successor. Plaintiffs mother eventually succeeded Kwabena Nkrumah and therefore took over the affairs of the land in dispute.

⁶ [2010] SCGLR 762 at 779

She caused cocoa to be planted on a portion of the land while the other portion had palm trees. It is after the death of Plaintiffs' mother that 3rd Plaintiff became the successor and took over the land. She then asked 2nd Plaintiff to be the caretaker. A paternal son of an uncle of the Plaintiffs Kwaku Budu in his witness statement said he used to go to the disputed land with his mother as her husband (stepfather of witness) was given a portion of the land to farm. That his stepfather took the land from an elder brother of witness biological father as the land was acquired by his paternal grandmother who happens to be the grandmother of the Plaintiffs. He added that his father attempted giving a portion of the land to him to farm but Plaintiffs mother objected to it. He was later given a small portion to farm. The witness has been on the disputed land which was given to him by his father to farm with the knowledge of the Plaintiffs' mother. Plaintiffs witness Kojo Yamoah also indicated how he came to be on the disputed land in 1983 with the permission of Plaintiffs' mother for 5 years without any interference. All these evidences stated clearly the root title of the Plaintiffs over the land in dispute. Persons who are not family members but had the opportunity to farm on the land had it from the Plaintiffs' mother as far back as 1983.

There is therefore no doubt that the Plaintiffs were able to prove their root of title as well as identity of the disputed land as there has been clear corroboration in the evidence.

WHETHER OR NOT A PERPETUAL INJUNCTION SHOULD BE ORDERED RESTRAINING THE DEFENDANTS AND ALL WHO MAY DEAL WITH THE LAND ON THEIR BEHALF FROM INTERFERING WITH IT.

In land matters the position of the law is that for a person to succeed in an action for declaration of title, recovery, possession, and an injunction, that person must establish by positive evidence the identity of the land which is the subject matter of the action else his action shall fail for lack of certainty. In identifying the land, the boundaries should be

certain so that an order for possession and perpetual injunction can be effective. In the case of **Asante-Appiah v Amponsah alias Mensah**⁷, Brobbey JSC stated that “the law is well established that where a party’s claims are for possession and perpetual injunction, he puts his title in issue. He therefore assumes the onus of proving his title by a preponderance of probabilities, like any party who claims declaration of title to the land”. Again, in case of **Asante and Another Vrs Amponsah and Another**⁸, “The law is that although possession may be nine tenth’s the law no matter how long it is, it usually cannot ripen into ownership. To prove their title to the disputed land on the balance of probabilities the Plaintiffs needed to prove more than possession. They had to prove their right of title and mode of acquisition”. As discussed above, the Plaintiffs with their witnesses were able to identify the land in dispute as well as Plaintiffs root of title. Therefore, the court will be comfortable to declare the Plaintiffs as having possession and an injunction placed on the land against the Defendants.

WHETHER OR NOT THE DISPUTED LAND SHOULD BE DECLARED AS BELONGING TO THE DESCENDANCE OF EKUA EFAA AND EKUA NYARKOWAA AS INDICATED BY DEFENDANTS IN THEIR COUNTER CLAIM.

Whenever a Defendant also files a counterclaim, the same standard or burden of proof is used in evaluating and assessing the case of the Defendant just as was used to evaluate and assess the case of the Plaintiff against the Defendant. This principle was applied in **Jass Co Ltd and Ano v Appau and Another**⁹, here the Defendants counterclaimed and that meant that, they also assumed the position of the Plaintiff in respect of their counterclaim. The Defendants are expected to corroborate their evidence but not just mounting the witness box making averment without corroboration as in the case of

⁷ [2009] SCGLR 90 at 98

⁸ [2022] GHASC 2 (20 January 2022)

⁹ [2001] SCGLR 265 at 270-271

Majolagbe v Larbi. In the evidence of the 1st Defendant, he said the land was acquired by a great grandmother of both parties called Ntifoaa. He further indicated that a portion of the land was curved out and given to the 1st daughter of Ntifoaa. He however failed to let the court know whether the rest of the land was given to the other children as a gift or what. Ntifoaa's failure to share the land among the rest of her children before departing from the earth means after her death a customary successor will be elected and he or she takes over the land on behalf of the rest of the children. The court unfortunately do not have answers to these as Defendants failed to provide same. The Defendants have not been able to prove their root of title to the disputed land. In the evidence of the 1st Defendant¹⁰, he claims because Plaintiffs have taken over the other ancestral properties, they should be declared as the sole owners of the land in dispute. Unfortunately, that is not the stands of the law. Until a party can prove his title in land, the court cannot declare such one as having title.

WHETHER OR NOT THE DEFENDANT PER THEIR COUNTER CLAIM BE DECLARED AS HAVING A BETTER TITLE TO THE DISPUTED LAND.

In an action for declaration of title the onus of proof lies with the Plaintiff. in the case of **Dokutso Tei Kwabla v Lands Commission and Another**¹¹, the parties claim and counterclaim respectively for declaration of title to the same parcel of land and therefore each party bears the onus of proof as to which side has a better title. The same standard used in determining the case of the Plaintiff is applied in determining that of the Defendants. In the case before this court, the Defendants, mentioned the persons sharing boundaries with the land as Efua Antwiwaa, Kwame Arhin, Kweku Tarkwa, Nana Yaa Mansah and Korangtemaa. The 1st Defendant never mentioned that the land in dispute shares boundary with a stream in his statement filed. His witness Yaw Botwey who claim

¹⁰ Para 15 (statement of defence and counter claim)

¹¹ [2017 – 2018] 1 SCGLR 497 at 509

to know the land gave a different boundary including Asunsu (stream) and wurabroni. There are conflicting boundaries as to the identity of the land. He also indicted that he used to visit the land with his mother when he was young, but no one saw his mother or himself on the disputed land as there is no corroboration to this averment. Also as indicated above Defendants have not been able to prove their root of title and this cast doubt on the averment made. It is worth noting that during the cross examination of the Defendant's witness, Kwaku Baah, he mentioned only names of persons believed to be descendants of Ekua Efaa who have occupied the disputed land and planted tree crops. The only close relative of the Defendants to have occupied the disputed land is Sarpomaa who only cultivated plantain and cassava and after her death a sister of the Plaintiffs (Georgina Yamson) took the entire land and planted cocoa. It is known that only owners of land or with their consent that tree crops are planted on farmlands. It is therefore safe to conclude that the Plaintiffs claim of having a better title to the disputed land is more probable than its non-existence. There was no resistance to the total takeover of the disputed land by the Plaintiffs' relatives especially for a crop like cocoa and palm tree. This cast a dark shadow on the claim of the Defendants as having anything to do with the land.

Now it is trite law that possession cannot ripen into ownership if a better title is proved. In **Osei (substituted by) Gillard v. Korang**¹², the court held that, 'possession is nine-tenths of the law and a Plaintiff in possession has a good title against the whole world **except one with a better title** (emphasis mine). It is the law that possession is prima facie evidence of the right of ownership and it being good against the whole world except the true owner he cannot be ousted of it'.

¹² [2013 – 2014] 1 SCGLR 221 at 234

With the suit under discussion, the Defendants who claim to have been in possession of the land since 2019 had good title against the entire world except the one with a better title. From the analysis of the court, the Plaintiffs have provided their root of title as well as proper identification of the land with corroboration from persons who have been on the land as farmers for considerable years. Plaintiffs' sister, mother and direct uncles have all been on the land for so many years at different times per the evidence on record. Defendants' current possession therefore cannot oust the better title of the Plaintiffs especially the 3rd Plaintiff who is the customary successor to the disputed land.

WHETHER OR NOT PLAINTIFFS HAVE PROVEN THAT INDEED DEFENDANTS CAUSED DAMAGE TO THEIR CROPS ON THE DISPUTED LAND.

The 1st Plaintiff stated that he had planted some coconut seedlings on a portion of the disputed land and Defendant destroyed everything. In a response by 1st Defendant in his statement filed¹³ he stated that he 'removed' the coconut planted by someone on the disputed land. Defendants' witness Andrews Kwakye who claim to have been on the disputed land with 1st Defendant confirmed that he helped him to remove the coconut planted on the land¹⁴. There is enough evidence that 1st Plaintiff planted coconut seedlings on the disputed land and 1st Defendant with the aid of his witness removed the crop from the land. There is however no further evidence led by the Plaintiffs to prove that Defendants caused damage to other crops on the land as one of the reliefs of the Plaintiffs.

¹³ Para 22 statement of defence of 1st Defendant.

¹⁴ Para 9 witness statement of Andrews Kwakye.

WHETHER OR NOT A PERPETUAL INJUNCTION SHOULD BE ORDERED RESTRAINING THE DEFENDANTS AND ALL WHO MAY DEAL WITH THE LAND ON THEIR BEHALF FROM INTERFERING WITH IT.

In the case of **Asante- Appiah v Amponsah alias Mansa**¹⁵ Brobbey JSC stated, ‘The law is well established that where a party’s claims are for possession and perpetual injunction, he puts his title in issue. He therefore has the burden of proving his title to the land by the preponderance of probabilities. This same principle was used in the case of **Adwubeng v Domfeh**¹⁶. Therefore, an order for recovery of possession can only be granted if the court is satisfied that the party seeking for such an order has satisfied the burden of ownership. From the analysis of the court as presented above, the Plaintiffs have been able to prove that they have better title to the land in dispute. An order for a perpetual injunction in their favour and against the Defendants is in the right direction.

CONCLUSION

After a thorough analysis of the evidence of the parties and their witnesses and with statutes and case law, the following are the conclusion and orders of the court.

1. The Plaintiffs are declared as having better title to the land situated at a place called Ahweresugya within the vicinity of Breman Kokoso. The land shares boundaries with Opanyin Kwaahen, Kwaku Tarkwa, Auntie Bea and Opanyin Kwaku Yeboah.
2. The Plaintiffs are to recover the entire land measuring about 4 acres from the Defendants, their relatives, assigns, privies, workers, friends and all who may be

¹⁵ [2009] SCGLR 90 at 98.

¹⁶ [1996-97] SCGLR 660.

in occupation of the land on behalf of the Defendants. The Plaintiffs are to take possession of the land.

3. A perpetual injunction is ordered against the Defendants, their privies, assigns, relatives and all who may deal with the land on their behalf.
4. The 1st Defendant is to compensate the 1st Plaintiff with an amount of Seven Hundred and Ten Ghana cedis (GHC 710.00) for the damage caused to his coconut on the land.
5. An order for the payment of Five hundred Ghana cedis by Defendant for the destruction of food crops on the disputed land is dismissed as no evidence led on it.

The Defendants' counterclaim is therefore dismissed as they could not identify the land and proof their root of title.

Cost of Five Thousand Ghana cedis (GHC 5000.00) awarded against the Defendants.

.....SGD.....

HER WORSHIP EUNICE A APALIWEN (MRS)