

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 14TH DAY OF NOVEMBER, 2022.

SUIT NO: A1/12/2021

SAKEENA IBRAHIM DONKOR PLAINTIFF

VS

OPANYIN KOJO ATTA& ANOR DEFENDANT

JUDGMENT

The Plaintiff on her behalf and that of her sister Rahamat Ibrahim Donkor caused a writ to be issued jointly against the defendants for the following reliefs.

1. Declaration of title and ownership of a piece of land measuring about 0.64 acres located at Agona Odoben Newtown sharing boundaries with the Kuntanase-Odoben road, Madam Adwoa Gyanwah, Opanyin Kwame Essoun, and Opanyin Job's properties.
2. Recovery of possession of the disputed land.
3. Perpetual injunction restraining the defendants, their agents, privies, assigns, labourers, relatives and all who may deal with the land on their behalf from interfering with the ownership, possession and use by the Plaintiff and her siblings.

The defendants pleaded not liable to all the claims of the Plaintiff.

In the statement of claim of the Plaintiff as filed, she claims the 2nd defendant resides in a house situated behind her father's house while the subject matter is situated in front of

her father's house. That her father, Ibrahim Donkor acquired the disputed land and started a building project on a portion of the land leaving the portion which is the subject matter in court. In the process of building her father fell sick and the family had to relocate to Agona Swedru to seek medical treatment for him. They therefore left the disputed land with the uncompleted building. His father later gave both the uncompleted building and land in dispute to the Plaintiff and her sister as a gift. They gave 'aseda' in the presence of some witnesses. Her father executed a deed of gift to them. Her mother relocated back to Odoben and became the caretaker of the land and the uncompleted building. Her mother discovered that 2nd defendant had come to occupy a portion of the disputed land using same as his workshOpanyin When 2nd defendant was confronted as to who gave the land to him, he mentioned 1st defendant as his landlord. When 1st defendant was questioned, he said he found the land idle and decided to give it to the 2nd Defendant The 2nd defendant was made to be paying ground rent to Plaintiff's mother as the caretaker. The 2nd defendant stopped paying the rent and when asked he said he was instructed by 1st defendant not to pay the rent to Plaintiff's mother but to him. Plaintiff visited 1st defendant in his house to find out why he was moulding blocks on the land. His response was that the disputed land is his and that he wants to put up a building. She insisted that the 1st defendant has his house behind the uncompleted building whiles the disputed land is in front of the uncompleted building and cannot understand how 1st defendant came by the land in dispute.

During cross examination, Plaintiff said 1st defendant shares boundary with her father's land. Plaintiff insists that the land in dispute forms part of the land on which the uncompleted building is situated. She also said 2nd defendant used to pay the ground rent to her mother through Akwasi.

In the witness statement of Kweku Bonku (Plaintiff witness), he stated that, he was the driver who transported cement from Agona Swedru to Odoben for the Plaintiff's father

to build the house. The father of the Plaintiff also informed him of his intention of giving the land and the house to his children as a gift. The land and the uncompleted house were given to Plaintiff and her sister as a gift by their father.

During cross examination, witness said he lives very close to the disputed land and has full knowledge of it. When he saw 2nd Defendant on the disputed land, he approached him and advised him to be weeding around the house and whenever he harvests food on the land, he should give some to Plaintiff's mother. He also visited the 2nd defendant again with Plaintiff's mother as she complained to him that the 2nd defendant has refused to weed around the house. Witness insist that 1st defendant's house is not closer to the disputed land as it is behind the uncompleted building. That the 2nd defendant was paying rent of GHC 4 to the mother of Plaintiff.

In the statement of Ama Sarah, mother of the Plaintiff, she indicated that her husband, Kojo Ibrahim Sani Donkor, bought the entire land from the late Nana Ghansah chief of Agona Odoben then. Her husband started building on a portion of the land leaving the disputed portion which lies in front of the uncompleted building. At the time her husband bought his land, 1st defendant had not bought his land which is behind the uncompleted building sharing boundary with it. Her husband then gave the land to his daughters as a gift. Her daughters left for greener pastures and when she relocated back to Odoben she became the caretaker of the disputed land. She saw 2nd defendant on it and questioned him. He told her it was 1st defendant who allowed him to operate his shop there. When she confronted 1st defendant, he admitted that the land does not belong to him but because it was idle, he decided to give it out to the 2nd defendant to be used as his workshOpanyin Together with the 1st defendant, they went to 2nd defendant in his shop and 1st defendant introduced her to him as the owner of the land. the 2nd defendant was asked to be paying rent to her which he did for some time and stopped. She questioned 2nd defendant why he stopped paying the rent and his response was that 1st

defendant asked him pay to him as he is now the owner of the land. she later saw 1st defendant moulding blocks on the land. when she confronted him, he said he wants to build.

During cross examination, she insisted that 1st defendant rather shares boundary with the uncompleted building and not the subject matter. The subject matter is never the property of Kwesi Doku. Witness said it was after he confronted 2nd defendant on the land that he started to pay ground rent to her.

In the defence statement of the defendants, 1st defendant claim he bought the land from Kwesi Duku as the custodian of the land after he became customary successor to Nana Ghansah who was the chief. The 2nd defendant denied ever paying rent to the Plaintiff. What happened was that he planted plantain on a piece of land just by the uncompleted building. He gave some of the plantain and money to the mother of Plaintiff as the owner of the uncompleted building and not that he was paying rent. The 1st defendant started moulding blocks on the land as it belongs to him. That the disputed land shares boundary with the Plaintiff's land but does not form part of her land. The 1st defendant counter claim as follows;

1. Declaration of title and ownership of the land located at the District counsel school sharing boundaries with the main Odoben-Kuntanase motor road, Kojo Sani/motor road to D.C school, light poles plot and Nana Adwoa.
2. Recovery of possession of the land
3. Perpetual injunction restraining the Plaintiff, her assigns, privies, agents, relatives and all those claiming authority through her from interfering with the defendant's ownership, possession and use of the disputed land.

During cross examination, 1st Defendant said at the time he bought his land, Plaintiff's father had not built. He had a plot of land. he said he has not built any house on his land.

In the witness statement Kobina Bonku (defendants' witness), that the land was sold to 1st defendant by his father Opanyin Kwesi Doku. In the year 2002, Plaintiff's father and the 1st defendant came to meet his father Opanyin Kwesi Doku. Their mission was that Plaintiff's father wanted 1st defendant to sell the disputed land to him. that Opanyin Kwasi Doku objected to it.

During cross examination, witness said he was not there when 1st defendant bought his land and how many plots of land he bought. He also said Plaintiff father's uncompleted building was there before 1st defendant bought his land. that a road between the uncompleted house and the disputed land used to be a foot path until a school closed by was built then the foot path became a road.

In the witness statement of Kofi Ackom (defendants witness), he stated that, 1st defendant informed him that Plaintiff's father approached him demanding that the disputed land is his. That together with Plaintiff's father and 1st defendant, they appeared before Opanyin Kwesi Doku to verify as to who is the owner. They were told the disputed land was for the 1st Defendant

During cross examination, witness said, 1st Defendant bought the disputed land from Nana Kwesi Doku who was the chief in 1998. He insisted that the disputed land belongs to the 1st Defendant

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

1. The father of the Plaintiff acquired a piece of land from the chief of Agona Odoben Nana Ghansah.

2. A house was built on the land.
3. A gift was made by Plaintiff's father to his two daughters of the house and the land in dispute.
4. The 2nd defendant came to occupy the land in dispute.
5. The 2nd defendant also weeded around the uncompleted building and planted plantain.
6. The late Nana Ghansah was the chief of Agona Odoben and after his death his brother Nana Kwesi Doku became the chief of Odoben.
7. Both chiefs sold land to the Plaintiff's father and the 1st Defendant

ISSUES FOR DETERMINATION BY THE COURT

1. Whether or not the land in dispute is part of the land on which the uncompleted building is on which was sold to Plaintiff's father by the then chief of Agona Odoben Nana Ghansa.
2. Whether or not the alleged sale of the disputed land to 1st defendant by Nana Kwesi Doku is valid and confer title on the 1st defendant as the owner.
3. Whether or not the Plaintiff and her sister can be declared as having title to the disputed land.

WHETHER OR NOT THE LAND IN DISPUTE IS PART OF THE LAND ON WHICH THE UNCOMPLETED BUILDING IS ON WHICH WAS SOLD TO PLAINTIFF'S FATHER BY THE THEN CHIEF OF AGONA ODOBEN NANA GHANSAH.

The Plaintiff claims the land in dispute was sold to her father by then chief of Agona Odoben Nana Ghansah. Her father Ibrahim Donkor has given the house with the adjoining land (subject matter in court) to she and her sister. That her father built on a portion of the land leaving the other portion the subject matter in court.

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 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". Plaintiff therefore assumes the burden of producing sufficient evidence else her case fails.

¹ Section 11(4) NRCD 323

² Ibid 12(1)

³ [1987-89] 2 GLR 314

In the evidence of the Plaintiff and her witnesses, they claim Opanyin Ibrahim Donkor, father of the Plaintiff bought the land from Nana Ghansah the chief of Odoben and started building on a portion of the land leaving the other portion just in front of the building that he fell sick and had to leave the community to seek for treatment. The 2nd witness for Plaintiff said when she saw the 2nd defendant on the disputed land, she approached him to know how he got unto the land. The 2nd defendant mentioned 1st defendant as the one who permitted him. The 2nd defendant started paying rent to the caretaker (pw2). This is what transpired during cross examination of the Plaintiff's witness (PW2) by the 2nd defendant

Q. The land you gave me is the one I planted the plantain, and the one 1st defendant gave me is the one I have my wielding shop on.

A. I have not given you any land. I only saw you on the land and asked who gave the land to you and you said it was 1st Defendant, I told you the land is not his. You then started paying rent to me.

From the above cross examination, 2nd defendant who is currently on the disputed land paid rent to Plaintiff's caretaker (PW2).

This also transpired between Plaintiff and defendants' 2nd witness Kofi Ackom during cross examination.

Q. My father bought the land in dispute from Nana Ghansah.

A. That is not true.

Q. So if 1st defendant bought the land from Opanyin Kwesi Doku, it means the land was sold by Nana Ghansah before he died and Kwesi Doku became the chief. The land was sold before Kwesi Doku became the chief.

A. That is not true.

Q. Ebusuapanyin Yaw Humaya was the head of family at the palace, and he signed my father's document.

A. When Nana Ghansah died, Nana Kwasi Doku became the chief and sold it to 1st Defendant

The above interactions suggest that Plaintiff's father bought the land before 1st defendant bought his. Plaintiff's father acquired the land from the chief Nana Ghansah. It was after the death of Nana Ghansah that 1st defendant's vendor (Nana Kwesi Doku) became the chief then sold the same land again. With this the fact that the land in dispute forms part of the land with the uncompleted building is more probable than its non-existence.

WHETHER OR NOT THE ALLEGE SALE OF THE DISPUTED LAND TO 1ST DEFENDANT BY NANA KWESI DOKU IS VALID AND CONFER TITLE ON THE 1ST DEFENDANT AS THE OWNER.

It has been established that the land in dispute was sold to Plaintiff's father by the chief of Agona Odoben Nana Ghansah. The 1st defendant also claims he bought the land from the successor of Nana Ghansah (Nana Kwesi Doku). Both vendors sold the disputed land in their capacity as chiefs.

Now it is settled law that the proper person to alienate stool land is the occupant or regent or caretaker acting with the consent and concurrence of the principal members of the stool⁴. Alienation by the chief alone without the consent and concurrence of the principal

⁴ Adjei Dominic Dennis: Land Law, Practice and Conveyancing in Ghana. 3RD Ed. Page 37.

members of the stool is void⁵. In the case of **Awuku v Tetey**⁶ which had to do with the alienation of Osu stool lands at Maamobi-Kotobaabi, the court said that any alienation of stool lands by a caretaker acting without the consent and concurrent of the chief of Osu (Osu Mantse) or the Osu Mantse acting without the concurrence of the elders and headman was void. Again, in the case of **Akunsah v Botchwey and another**⁷, the supreme Court held that stool lands are communally owned and any alienation by a chief without the consent and concurrence of the elders of the stool would render the alienation void.

A grant of stool land to a person by a chief with the consent and concurrence of the principal members would remain valid even if the chief's enstoolment is nullified. Once the grant was made when the person was a chief and his nomination had not been nullified, whatever function or acts performed by him in his capacity as a chief would remain valid and binding⁸. A successor to a stool cannot disassociate himself from any grant of land made by the predecessor⁹. In the case of **Amankwa v Kyere**¹⁰, the court stated that, a stool is a corporation sole and provided the occupant has been elected and installed in accordance with custom and law, a person contracting in good faith with the stool is entitled to his remedies should the contract be abrogated. Even where the appointment of the stool occupant is later invalidated, his contracts are not hereby invalidated.

With the case under discussion, Nana Ghansah was the chief of Agona Odoben as both parties and their witnesses corroborated and he died as a chief. There is no dispute as to whether Nana Ghansah did not alienate the disputed land to the father of Plaintiff without the consent and concurrence of the principal members. If these have been

⁵ Ibid

⁶ [2011] 1 SCGLR 366

⁷ [2011] SCGLR

⁸ Adjei Dominic Dennis: Land Law, Practice and Conveyancing in Ghana. 3rd Ed. Page 38

⁹ Ibid

¹⁰ [1963] 1 GLR 409.

established, the law will not allow Nana Ghansah's successor Nana Kwesi Doku to resell the same land to another. The reason being that the land was never available for Nana Kwesi Doku to sell. There is no evidence that the land in dispute was the personal property of Nana Doku, and he sold it to the 1st Defendant. It can be deduced that at the time of sale to the Plaintiff's father, Nana Doku was there (not as a chief) but never protested if indeed the land was his. For him to only ascend to the throne then sell the land gives a clear impression that the land is a stool land. This makes the sale by Nana Ghansah valid which also means the disputed land was not available to the stool for Nana Doku to sell to the 1st Defendant. The disputed land was first sold to Plaintiff's father. The 1st defendant bought it after it had been sold to Plaintiff's father. Plaintiff's father was therefore first in time to be granted the land in dispute. In the case of **George Kwadwo Asante and another v Madam Abena Amponsah and another**¹¹, the supreme Court in upholding the decision of both the High Court and Court of Appeal indicated that, the appellant bought the land in dispute which was earlier sold to the respondent which means the appellant bought nothing as the respondent was first in purchasing the land in dispute. It is therefore clear in the case before the court that the transaction between Nana Kwesi Doku and the 1st defendant is caught by the principle of **Nemo Dat Quod Non Habet** and therefore Nana Kwesi Doku sold nothing to the 1st defendant as he bought nothing as well. No title was therefore passed to the 1st Defendant

Where the title of a party's vendor is questionable it affects the sale in totality. From the above discussions, the 1st defendant's vendor had no right to have sold the disputed land to him. The disputed land was not available as a stool land at the time he sold to the 1st Defendant. The alleged sale is therefore null and void and cannot oust the sale made to Plaintiff's father. No title can be conferred on the 1st Defendant He bought nothing as Nana Kwesi Doku had nothing and sold nothing to him. It was out of greed on both the

¹¹ [2022] SCGLR

vendor and vendee to engage in such a transaction. The coming into existence of the **Lands Act 2020 Act 1036** is a saviour to transactions of this nature. The new law can punish severely where persons deliberately sell the same land to two different people.

WHETHER OR NOT THE PLAINTIFF AND HER SISTER CAN BE DECLARED AS HAVING TITLE TO THE DISPUTED LAND.

In the case of **Ago Sai & others v Kpobi Tetteh Tsuru**¹² Ansa 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...’. The Plaintiffs has indicated that, the land in dispute which forms part of the uncompleted building is a gift from their father. As it has been established that, Plaintiff father’s purchase of the disputed land is valid, any transfer in the form of gift to Plaintiff and her sister cannot be challenged as well. Again, Plaintiff has also been able to identify the boundaries of the disputed land.

In the case of **Lartey v Hausa**¹³ where Ollenu J (as he then was) held that possession cannot ripen into ownership no matter how long it had been held or had. The 1st defendant claim he has been in possession of the land in dispute for many years. This does not confer title on him. His possession is only against the whole world but not a person with better title to the subject matter.

CONCLUSION

¹² [2010] SCGLR 762 at 779

¹³ [1961] GLR 773

After going through the evidence and analysing every bit of it, the opinion of the court is as follow:

Judgment in favour of the Plaintiff in all her reliefs as stated.

1. Plaintiff and her sister are declared as having a better title to the land in dispute located at Odoben Newtown measuring about 0.64 acres sharing boundaries with the Kuntanase-Odoben road, Madam Adwoa Gyanwah, Opanyin Kwame Essoun, and Opanyin Job's properties.
2. The Plaintiffs are to recover the entire land measuring about 0.64 acres from the defendants, their relatives, assigns, privies, workers, friends and all who may be in occupation of the land on behalf of the defendants. The Plaintiffs are to take possession of the land.
3. Perpetual injunction restraining the defendants, their agents, privies, assigns, labourers, relatives and all who may deal with the land on their behalf from interfering with the ownership, possession and use by the Plaintiff and her sister.

The 1st defendant's counterclaim on all his reliefs is dismissed as his vendor had no land to sell to him.

I am of the opinion that since the Plaintiff and her sister are the owners of the land in dispute or have a better title to it, in the interest of all the parties and justice, the agreement document (EXHIBIT 1) is cancelled. It is therefore ordered that the agreement document Exhibit 1 is cancelled.

Cost of Three Thousand Ghana Cedis(**GHC3,000.00**) awarded against the defendants and in favour of the Plaintiff.

.....SGD.....

HER WORSHIP EUNICE A APALIWEN (MRS)