

**IN THE DISTRICT COURT 2, TAMALE
HELD ON MONDAY 24TH OCTOBER, 2022
BEFORE HIS WORSHIP D. ANNAN ESQ.**

SUIT NO. A1/7/20

BETWEEN

CHANASE KOMPARE - PLAINTIFF

AND

MR. OSMAN - DEFENDANT

JUDGMENT

INTRODUCTION

1. This judgment relates to land, plot no. 333 situate and lying at Kpanvo Residential Area, within the magisterial district of this court. The plaintiff in this case is a retired civil servant while the defendant is unemployed.

2. On 19th June, 2020 the plaintiff instituted this action against the defendant for the following reliefs, which I reproduce verbatim:

- a. A declaration that plot no. 333 situate and lying at Kpanvo Residential Area is the bonafide property of the plaintiff and the defendant is developing it.
- b. An order of prohibitory injunction restraining the defendant, his agents, servants, assigns, successors, workmen claiming through him from interfering in whatever manner with the said plaintiff's ownership and possession of plot no. 333 lying and situate at Kpanvo Residential Area or structure erected thereon until final determination of this suit.
- c. Damages for trespass."

3. The defendant was duly served on 23rd June, 2020 and subsequently pleaded not liable to plaintiff's claim. Defendant, however, failed to comply with the orders of the court in filing his defence so this court, differently constituted, entered judgment in favour of the plaintiff on 22nd June, 2021. The plaintiff thereafter filed a Formal Decree dated 30th June, 2021 to enforce the said judgment. Here, the defendant moved the court for the said judgment to be set aside and same was granted on 12th October, 2021. The court then ordered the defendant to file his defence and the case to proceed.
4. When I first sat on the case, parties indicated to attempt settlement in line with Or. 25 of CI 59 (as amended). However, they failed to settle, hence the suit was set down for trial.

PLAINTIFF'S CASE

5. The plaintiff's evidence is that sometime in year 2004, he acquired plot no. 333 Kpanvo Residential Area from one Abukari Alhassan (now deceased). He states that he was given his allocation letter and he subsequently applied for a 99year lease at the Regional Lands Commission, Tamale. He added that whiles preparing to start a project on the said land, he fell ill and had to travelled to attend to his health. On his

return sometime in year 2019, he contacted one Majeed the son of the late Abukari Alhassan to take him to his plot. According to the plaintiff, Majeed contacted the late Abukari Alhassan's secretary who showed him the plot and Majeed thereafter took him (plaintiff) to the land. Later, the secretary of the late Abukari Alhassan requested for his land document stating that he was preparing to hand over to the new chief. Plaintiff says in his statement of claim that after inspecting his documents, the secretary made remarks like, "for a long time [I] had been wondering who W. K. Chanase was who did not show up to begin something on his plot." Plaintiff adds that after the secretary had satisfied himself that his allocation was properly recorded in the books, he was given the go ahead to develop the land. He then sent his son, Evans Kompari, to visit the land but the son returned with a report that someone, who they later identified as the defendant, had deposited some blocks on the land and claiming to be the owner of the land. When Plaintiff visited the land, he found that the defendant had dug foundation and work progressing at an alarming rate. Plaintiff claims that all efforts to get the defendant off the said land have failed, hence this present action.

6. Plaintiff tendered in evidence the following exhibits:

Exhibit A – Allocation of land to W. K. Chanase dated 30/4/2004

Exhibit B – Application letter for a 99year lease signed by Salifu Alhassan for W. K. Chanase to the Regional Lands office dated 12/2/2007

Exhibit C - A site plan bearing the name, Property of M. K. Chanase

Exhibit D – Search Report by Lands Commission dated 26/11/2020

Exhibit D1 – A site plan bearing the name, Property of M. K. Chanase attached to the Search Report (Exhibit D)

7. Let me point out that the plaintiff in his statement of claim filed on 4th December, 2020 maintained reliefs 'a' and 'c'. But relief 'b' was restated as "[p]erpetual injunction restraining the defendant, his agents, workmen or any other person claiming through him from interfering with the plaintiff's plot no. 333 Kpanvo Residential Area". He also added relief 'd', punitive costs and relief 'e' any further orders that this honourable court may deem fit. I shall deal with the effect of the variation by the statement of claim later in this judgment.

PLAINTIFF'S WITNESS (PW1)

8. The plaintiff called his son, Evans Kompari (PW1), who corroborated his evidence. PW1 adds that when he confronted the defendant, defendant showed him a plot allocation document, site plan, change of ownership document with an affidavit with plaintiff's name, but there was no signature on it. He maintains that the plot belongs to his father, the plaintiff.

DEFENDANT'S CASE

9. In his statement of defence and counterclaim, defendant evinced that the land in dispute belongs to W. K. Chanase, who is the father of the plaintiff, and that when plaintiff's father was alive he sold the disputed land to him. He contends that plaintiff's father swore a statutory declaration instructing him to go to the chiefs for a new allocation letter and due to that plaintiff's father had transferred his interest in the said land, therefore the plaintiff has no right to claim ownership of same. In his counter-claim, he seeks a declaration that plot no. 333 situate and lying at Kpanvo Residential Area is his.

10. The defendant also tendered in evidence:

Exhibit 1 - the land allocation document dated 24/3/2004

Exhibit 2 - the application letter for the 99 year lease

Exhibit 2A - a statutory declaration by W. K. Chanase dated 12/1/2009.

Exhibit 2B - a site plan headed, 'Tamale, Kpanvo Residential Area Block B, Plot 333, Property of Abdul-Mumeen Osmanu'.

Exhibit 2C - a site plan headed, 'Tamale Metro, Kpanvo Residential Area Block B, Plot 333, Property of Abdul-Mumeen Osmanu'.

DEFENDANT'S WITNESSES

11. Defendant called two witnesses, Abdul Momeen Saeed (DW1) and Salifu Mahama (DW2). According to DW1, defendant expressed interest to buy a land about 13years ago, thus sometime 2008. He informed Salifu Mahama (DW2) who also told them that one Abukari was advertising a land for sale. They met Abukari and paid GHS800.00 for the land. Thereafter, the defendant was given documents which bore the name W. K. Chanase on it. He added that he contacted the said Abukari for the name on the said land to be changed to defendant's name. From there, he did not involve himself any further.

12. DW2, Salifu Mahama, also corroborated the evidence of DW1, but added that after the said Abukari was paid, he had nothing to do with the land until the defendant approached him concerning this dispute.

ISSUES FOR DETERMINATION

13. The issues borne out by the facts are:

- a. Whether or not plaintiff is the same person as W. K. Chanase?*
- b. Whether or not Plot No. 333, Kpanvo Residential Area belongs to either party?*

BURDEN OF PROOF

14. In civil cases, the general rule is that the party who in his pleadings or his writ raises issues essential to the success of his case assumes the onus of proof on the balance of probabilities. See the cases of **Faibi v State Hotels Corporation [1968] GLR 471** and **In re Ashalley Botwe Lands; Adjetey Agbosu & Ors. v. Kotey & Ors. [2003-2004] SCGLR 420**. The Evidence Act, 1975 (NRCD 323) uses the expression 'burden of persuasion' and in section 14 that expression has been defined as relating to, 'each fact the existence or non-existence of which is essential to the claim or defence he is asserting.' See also ss. 11(4) and 12(1) and (2) of NRCD 323.

15. With regards to what is required of the plaintiff in land cases, the law is that the he must succeed on the strength of his own case and not on the weakness of the defendant's case, see **Odametey v Clocuh [1989-90] 1 GLR 14, SC**. In **Kodilinye v Odu [1935] 2 WACA 336**, the court puts it simply that "in case of doubt, ...the party who asserts must lose."

16. Where there is claim and a counterclaim filed in an action for declaration of title, the Supreme Court speaking through His Lordship Ansah JSC in the case **Osei v Korang [2013] 58 GMJ 1**, stated as follows:

"... each party bears onus of proof as to which side has a claim of title against his/her adversary, for a counter claimant is as good as a plaintiff in respect of a property which should he assays to make his/her own."

ANALYSIS OF THE ISSUES

Issue a

17. Issue a, thus, *whether or not plaintiff is the same person as W. K. Chanase?* It is trite law that he who asserts must prove. In the case **Okudzeto Ablakwa (No. 2) v. Attorney-**

General & Obetsebi-Lampsey (No. 2) [2012] 2 SCGLR 845, the Supreme Court in dealing with the onus of proof of an allegation held at page 867 as follows:

“...What this rule literally means is that if a person goes to Court to make an allegation, *the onus is on him to lead evidence to prove that allegation*, unless the allegation is admitted. If he fails to do that, the ruling on that allegation will go against him. Stated more explicitly, a party cannot win a case in Court if the case is based on an allegation which he fails to prove or establish.”

18. In the instant case, plaintiff in his testimony states that his full name is Chanase Kompari Wapori. He never stated anywhere that W. K. Chanase is a different person. It is rather the defendant who is alleging that the plaintiff is not the same person as W. K. Chanase. Hence, the onus is on the defendant to prove. Defendant in his statement of defence and counterclaim states at paragraphs 3 and 4 as follows:

“3. The defendant in further denial say that the land in dispute was initially the property of W. K. Chanase.

4. Defendant in further answer say that W. K. Chanase is the father to the current plaintiff.”

19. Also, here are excerpts of the cross-examination of the defendant by the plaintiff:

“Q: I suggest to you that you did not have interactions with W. K. Chanase?

A: I do not know W. K. Chanase.

Q: You stated in your evidence that my father is W. K. Chanase, not so?

A: It was you who said so.

....

Q: You say you do not know W. K. Chanase but you claim he is dead, who told you he is dead?

A: I only know the death of Abukari Zee. But as to whether W. K. Chanase is alive or not, I cannot tell. I only got to know you are the son of W. K. Chanase in this court."

20. In the circumstance narrated supra, I find contradictions in defendant's own evidence. In effect, the defendant has not been able to prove that the plaintiff is not the same person as W. K. Chanase and I so hold. See **Okudzeto Ablakwa (No. 2) v. Attorney-General & Obetsebi-Lampsey (No. 2) (supra)**.

Issue b.

21. Issue b, thus, *whether or Plot No. 333, Kpanvo Residential Area belongs to either party*, the law is that, "[i]n an action for a declaration of title, a plaintiff who failed to establish the root of title must fail because such default was fatal to his case." See the case of **Ogbarmey-Tettey v. Ogbarmey-Tetteh [1993-94] 1 GLR 353**.

22. His Lordship Atuguba JSC (as he then was) in **Fosu & Adu-Poku v. Dufie (Dec'd) & Adu-Poku-Mensah [2009] SCGLR 310**, citing the celebrated case of **Odoi v. Hammond [1971] 2 GLR 275**, held that:

"It is now common learning in this country that in an action for declaration of title to land, the onus is heavily on the plaintiff to prove his case, and he

cannot rely on the weakness of the defendant's case. He must indeed 'show clear title'..."

23. As pointed out earlier in this judgment, where there is claim and a counterclaim filed in an action for declaration of title, each party bears onus of proof. See **Osei v Korang (supra)**.

24. The law is also that the trial court has to decide which set of facts or whose version of the facts or which parties should be believed or disbelieved, i.e. which of the varying or conflicting versions of the parties' stories, facts or evidence is credible, see **Ntim v Essien [2001-2002] SCGLR 451**. Here, the trial judge is required to critically evaluate the evidence of both parties, before coming to a conclusion of preferring one to the other.

25. From the evidence, plaintiff in brief claims that he bought plot no. 333 Kpanvo Residential Area from the late Abuakari Alhassan sometime in 2004, but due to ill health, he was unable to develop it until 2019 when he visited the land and noticed that the defendant had entered the land. Plaintiff argues that when he confronted the defendant, defendant produced a site plan and a statutory declaration bearing his name. He maintains that he has not alienated the said land to anyone. According to plaintiff, his allocation letter is dated 30/4/2004, i.e. Exhibit A. Below are excerpts of cross-examination of plaintiff:

“Q: I am putting it to you that you were not aware of the existence of the plot that is why you only came forward in 2020 to claim ownership?

A: I am aware of the existence of the plot, because I bought it and paid for it. And I acquired the documents covering it.

Q: I am putting it to you that you have no witnesses of the said land purchased by you?

A: It is true that when I want to buy the plot I went alone. I did not go with any person. But the one who sold it to me left a record and that is my witness.

Q: I am putting it to that the original W. K. Chanase lawfully executed a transfer of the land to the defendant on the 12/1/2009?

A: I am W. K. Chanase and I never should any land to him.

Q: You see when W. K. Chanase did the transfer he went before the High Court Registrar, Tamale who verified before commissioning the transfer?

A: I am saying that I am W. K Chanase and I never went to any of the places that you have mentioned to swear to any document.

Q: After the Registrar commissioned, the defendant went to the Lands Commission and applied for a 99 year lease and was approved by the Lands Commission?

A: I never sold anything to him, so if he did that he impersonated me.

Q: When the defendant finished his documentation, he went to the land and molded blocks and went to some extend to develop the land without any protest from the surrounding neighbours?

A: It was wrong for him to start any development on the land knowing that it wasn't his.

Q: Have a look at your witness statement below paragraph 23, you see your signature there?

A: Yes.

Q: Have a look at Exhibit B, have you realized that the signatures are different?

A: Actually, the signature on Exhibit B is not my signature. It also indicates that someone was signing for me.

Q: I am putting it to you that the "For" was inserted recently?

A: Exhibit B is a photocopy that I took delivery a long time back before this issue.

Q: I am putting it to you that Exhibit B has the signature of the original W. K. Chanase?

A: I do not think there are two W. K. Chanases. I am the original W. K. Chanase.

Q: Also in your statement, you mentioned that you have filed a search report at the Lands Commission but it has not been tendered?

A: I also added that if the court demands for it.

Q: I am putting it to you that since the original W. K. Chanase has transferred the land to the defendant, you have not right to challenge the transfer to the land.

A: I am only the W. K. Chanase who has purchased this plot and has documents to it.

...

CoD: I am a putting it to you that the search report [Exhibit D] doesn't say you own the land in dispute?

A: It is clear who registered the land in dispute.

Q: You see every application for search includes a site plan by the applicant, so the Lands Commission merely attached the site plan you used for your search?

A: They are also indicating that the name on the site plan indicates the owner of the land that is marked on their map.

Q: I am putting it to you that the defendant document has a site plan endorsed in his name?

A: That is totally wrong because I had my documents before him."

26. I find that plaintiff bought the land from Abukari Alhassan dated 30/4/2004. He, however, did not develop it until 2019 when he went back to the land and this issue arose. His search report, Exhibit D dated 26/11/2020, does not reflect his assertion that Lands Commission has registered the property in his name. In fact, his search report is subsequent to the filing of this case.

27. Defendant, on his part, contends that he bought the said plot in dispute from the same Abukari Alhassan (Abukari Zee). He further contends that after he paid for the land, he was given an allocation letter dated 24/3/2004, Exhibit 1, but he later noticed that the land was in the name of W. K. Chanase. So he (through DW1) contacted the said Abukari Zee to have the name changed to his. He adds that plaintiff's father W. K. Chanase later transferred his interest in the said land to him by a statutory declaration dated 12/1/2009, Exhibit 2A. This is what the defendant stated in his statement of defence and counterclaim at paragraphs 5, 6 and 7 as follows:

"5. The defendant says further [that] while W. K. Chanase was still alive, the land in dispute was so [sold] to him.

6. The said W. K. Chanase initially instructed the defendant to go for a new allocation letter from the chiefs and later swore a statutory declaration.

7. *The defendant says that since the plaintiff's father divested his interest in the land in dispute, the plaintiff has no right to claim ownership of land in dispute."*

28. Defendant in his witness statement also stated at paragraph 7 as follows”

“7. *After we paid for the land the documents were given to me and I found out that it had the name of one W. K. Chanase on the land in dispute.”*

29. Also, below are excerpts of cross-examination of the defendant:

“Q: *What is the name of your grantor?*

A: *Abukari Zee*

...

Q: The allocation had someone’s name on it, so what did you do about it?

A: I am illiterate so when I was about to develop the land, plaintiff came and told me that the land belongs to him.

Q: You did not find it necessary to find out the person on the allocation?

A: I never knew the name on the said allocation. It was a different name to that of Abukari Zee. *It was my father who bought it from Abukari Zee for me.*

Q: You clearly stated that when you took the allocation, you went back to Abukari Zee for the name to be changed, not so?

A: That is not true

Q: I am putting it to you that all that you are telling this court is not true?

A: I am being truthful to the court.

...

Q: The affidavit you claim was given to you by W. K. Chanase you claim you don't know him so how come you have it?

A: That is not true.

Q: Is this statutory declaration not attached to your Exhibit 1?

A: Yes it is attached to my allocation letter.

Q: Once you do not know W. K. Chanase and you have tendered this statutory declaration, is it not a fake document?

A: There is no any fake document that I presented to this court, I am only being truthful.

Q: I put it to you that you know about the whole plan to take the land away from me?

A: There is no defrauding regarding this issue. *I bought the land over 13 years ago.*

Q: You know this land belongs to someone instead of finding out you rather said W. K. Chanase is dead?

A: It was you who announced the death of W. K. Chanase to this court.

...

B/C: When did you get to know that the land was in the name of one W. K. Chanase?

A: Last year 2021, when I stated developing the land."

30. Defendant, DW1 and DW2 also stated that they bought the land at GHS800.00 from Abukari Zee. DW1 further stated that when they found out that the land was in the name of W. K. Chanase, he contacted the said Abukari Zee to change the name to that of the defendant. He added that, "[t]he rights of the plaintiff over the land were extinguished the moment his [plaintiff's] father transferred ownership to the defendant".

31. I find several inconsistencies in the evidence of the defendant. In one breathe, he contends he bought the land from Abukari Zee. In another breathe, he claims W. K. Chanase sold it to him. At a different moment, he did not buy the said plot but rather his father did. This puts Exhibit 1 his allocation document in serious doubt.

32. I wonder how defendant's allocation is first in time, but he noticed that the said land was in the name of W. K. Chanase. Defendant says he bought the land from Abukari Zee. He contradicts his testimony when he stated that his father bought the land for him. He also says W. K. Chanase sold the land to him. It is also unclear how he got W. K. Chanase to swear to a statutory declaration in 2009 purporting to transfer the land to him. Earlier, I have decided that the said W. K. Chanase is the same person as the plaintiff. So, how come defendant got W. K. Chanase to transfer the said land to him in 2009 when in fact he claims he only got to know in 2021 that the land was in the name of W. K. Chanase? Also, if he bought the land 13years ago, that puts him somewhere in 2008/2009 to be given the allocation document. If so, how come the allocation document is dated 24/3/2004? From the evidence, it is in year 2007 that the plaintiff sought to have the land registered in his name. This should answer why the defendant got to know that the land was in the name of one W. K. Chanase.

33. From the above, I find that the defendant had notice of the land belonging to the plaintiff years back, but he is running in circles with the truth.

34. I note that in an action for declaration of title to land, the onus is heavily on the plaintiff to prove his case, and he cannot rely on the weakness of the defendant's case. See **Fosu & Adu-Poku v. Dufie (Dec'd) & Adu-Poku-Mensah (supra)**. This rule interestingly applies *mutatis mutandis* where the defendant counterclaim for a declaration of title to land, see **Osei v Korang (supra)**.

35. Let me now remind myself of what is required of the court in determining which party's evidence is credible. Having critically evaluated the evidence of both

parties, I find the evidence of the plaintiff more credible and consistent with his acquisition than the defendant. I, therefore, find in favour of the plaintiff.

36. Now regarding the reliefs sought in the writ of summons being different from that in statement of claim, the law is that the contents in the statement of claim overrides that in the writ of summons, see **Kama Health Services Limited v Unvilever Ghana Limited [2013] DLSC 2751** where His Lordship Benin JSC, as he then was, stated that, "...A case is contested on the basis of pleadings hence the relief endorsed on the writ which was varied in the statement of claim will stand as amended to the extent of the variation." In the present case, plaintiff in his statement of claim filed on 4th December, 2020 maintained reliefs 'a' and 'c' of his writ of summons. Relief 'b' was restated as "[p]erpetual injunction restraining the defendant, his agents, workmen or any other person claiming through him from interfering with the plaintiff's plot no. 333 Kpanvo Residential Area". He also added reliefs 'd', punitive costs and 'e' any further orders that his honourable court may deem fit.

37. Regarding relief c, damages for trespass, defendant admits going onto the land to develop it. He has dug and laid foundation on the disputed land. I shall exercise my discretion as stated in **Laryea v Oforiwaa [1984-86] 2 GLR 410** in determining the amount to award as general damages for trespass in my conclusion.

CONCLUSION

38. I, hereby, enter judgment in favour of the plaintiff as follows:

- a. I decree that that plot no. 333 situate and lying at Kpanvo Residential Area, Tamale is the bona-fide property of the plaintiff.
- b. The defendant, his agents, servants, assigns, successors, workmen claiming through him are perpetually restrained from interfering in whatever manner with the plaintiff's plot no. 333, Kpanvo Residential Area.
- c. General damages for trespass is assessed at GHS5,000.00
- d. Costs of GHS2,000.00 is awarded in favour of the plaintiff.

H/W D. ANNAN ESQ.

[MAGISTRATE]

PLAINTIFF APPEARED IN PERSON

SHIEKH-ARIF ABDULLAH FOR THE DEFENDANT

References:

1. *ss. 11(4), 12(1), (2) and 14 of the Evidence Act, 1975 (NRCD 323)*
2. *Faibi v State Hotels Corporation [1968] GLR 471*
3. *In re Ashalley Botwe Lands; Adjetey Agbosu & Ors. v. Kotey & Ors. [2003-2004] SCGLR 420*
4. *Odametey v Clocuh [1989-90] 1 GLR 14, SC.*
5. *Kodilinye v Odu [1935] 2 WACA 336*
6. *Osei v Korang [2013] 58 GMJ 1*
7. *Okudzeto Ablakwa (No. 2) v. Attorney-General & Obetsebi-Lamptey (No. 2) [2012] 2 SCGLR 845*

8. *Ogbarmey-Tettey v. Ogbarmey-Tetteh* [1993-94] 1 GLR 353
9. *Fosu & Adu-Poku v. Dufie (Dec'd) & Adu-Poku-Mensah* [2009] SCGLR 310
10. *Odoi v. Hammond* [1971] 2 GLR 275
11. *Ntim v Essien* [2001-2002] SCGLR 451
12. *Kama Health Services Limited v Unvilever Ghana Limited* [2013] DLSC 2751
13. *Laryea v Oforiwaa* [1984-86] 2 GLR 410