

**IN THE DISTRICT COURT 2, TAMALE**  
**HELD ON MONDAY 17TH OCTOBER, 2022**  
**BEFORE HIS WORSHIP D. ANNAN ESQ. MAGISTRATE**

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**SUIT No.: A2/13/2022**

**BETWEEN**

**MOHAMMED ALHASSAN - PLAINTIFF**

**AND**

**1. ABUKARI ALHASSAN - DEFENDANTS**  
**2. SHAHADU NABILA**

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**JUDGMENT:**

1. This is a judgment relating to land. The plaintiff describes himself as a retired groundnut trader, but currently a farmer. Plaintiff describes the 1<sup>st</sup> defendant as his brother. The 2<sup>nd</sup> defendant is said to be the owner of the land in dispute.
2. The brief facts of this case are that, On 21<sup>st</sup> December, 2021 the plaintiff took out a writ of summons against the defendants for the following reliefs:
  - a. A declaration of title to all that parcel of land situate and known as Plot No. 141, Ward K Residential Area, Tamale;

- b. An order for interlocutory injunction restraining the defendants, their agents, servants, licenses, lessees, assigns, etc from having any dealings with or on the said property;
  - c. An order of the Court to cancel or delete any record or transactions done by the defendants, their agents, servants, licenses, lessees, assigns, etc in respect of Plot No. 141, Ward K Residential Area, Tamale; and
  - d. Any other relief this Honourable Court deems fit.
3. After service of the writ of summons on the defendants, the 1<sup>st</sup> defendant was in Court on 18<sup>th</sup> February, 2022 and pleaded not liable to plaintiff's claim. 2<sup>nd</sup> defendant, however, was absent. 1<sup>st</sup> Defendant was given the opportunity to file his defence or witness statement, but failed to do so. The demeanour of 1<sup>st</sup> defendant is that he does see the need of this matter in Court, hence he ceased coming to Court after two attendances. The 2<sup>nd</sup> defendant, on his part, came to Court on 12<sup>th</sup> May, 2022, the very day the case was slated for hearing. He pleaded not liable to the claims of the plaintiff and gave evidence, *viva-voce*.
4. I must admit that the defendants are very old people and their appreciation of the legal processes delayed the entire hearing. Nonetheless, I must commend the 2<sup>nd</sup> defendant for coming to Court, despite his antics in Court.

#### THE PLAINTIFF'S CASE

5. Plaintiff in his witness statement filed on 26<sup>th</sup> April, 2022 stated that he owns the land with Plot No. 141, Ward K Residential Area, Tamale. He claims he acquired it from the 2<sup>nd</sup> defendant and the transfer was done sometime in 2003. Thereafter, he built a 4-bedroom house on the said land. He further stated that after he had built on the property, his son lived in it until the 1<sup>st</sup> defendant later took possession

of the house. Later, when he attempted to have the property registered in his name, he discovered that it had been registered in the name of one, Briamah Alhassan, 1<sup>st</sup> defendant's late brother. Upon this discovery, plaintiff approached the 1<sup>st</sup> defendant. According to the plaintiff, 1<sup>st</sup> defendant has given the land documents to 2<sup>nd</sup> defendant and that the defendants are unwilling to hand over the documents or cancel their present application before the Lands Commission, Tamale. Hence, he instituted this action seeking the reliefs aforementioned.

6. Plaintiff tendered in evidence Exhibit A, an application letter for a 99year lease, dated 10<sup>th</sup> January, 2002. Exhibit B, picture of the 4-bedroom house on the said land. The plaintiff, however, tendered Exhibits C and D through the 2<sup>nd</sup> defendant. Exhibit C, a Statutory Declaration by Mr. Shahadu Nabila dated 10<sup>th</sup> January, 2002. Exhibit D, a Statutory Declaration by Mr. Shahadu Nabila dated 22<sup>nd</sup> May, 2013. It is important at this point to note that the plaintiff at all material times had Exhibits C and D in his possession, but failed to tender it as part of his evidence-in-chief.

## DEFENDANTS' CASE

### 1<sup>ST</sup> DEFENDANT

7. As earlier pointed out, the 1<sup>st</sup> defendant attended Court on 18<sup>th</sup> February, 2022 and pleaded not liable to the claims of the plaintiff. Thereafter, he failed to come to Court or file his defence or witness statement when ordered to do so. He also ceased coming to Court.

### 2<sup>ND</sup> DEFENDANT

8. The 2<sup>nd</sup> defendant, on his part, attended Court on 12<sup>th</sup> May, 2022 and pleaded not liable to plaintiff's claim. He stated that he does not know the plaintiff. His evidence-in-chief is brief as follows:

“The land in question is mine. Plaintiff is only trying to use force to take it from me.”

9. He denied ever selling the land to the plaintiff or preparing any land document for the plaintiff. Exhibit 1 is a right thumbprint of the 2<sup>nd</sup> defendant taken in open Court. He also tendered in evidence Exhibits 2 and 3, a site plan covering Plot No. 141, Ward K Residential Area and a proposed house drawing for the said land, respectively.

#### ISSUES FOR DETERMINATION

10. The issues borne out by the facts are:
  - a. *Whether or not Plot No. 141, Ward K Residential Area, Tamale and the property thereon belongs to the plaintiff?*
  - b. *Whether or not the present registration by the defendants should be halted by an order of this Court?*

#### BURDEN OF PROOF

11. 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; Adjete 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.
12. 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." There is no onus on the defendant to disprove the claim by the plaintiff. Therefore, however unsatisfactory or conflicting the defence may be, it cannot avail the plaintiff. In **Barima Gyamfi v Ama Badu [1963] 2 GLR 596**, the Supreme Court held that the evidence of the defence only becomes important if it can upset the balance of probabilities which the plaintiff's evidence might have created in the plaintiff's favour or if it tends to corroborate the plaintiff's evidence or tends to show that the evidence led on behalf of the plaintiff was true. Because of these possible effects of the defendant's case, the court is duty bound to consider the case of the defendant, no matter in what form the defence is presented. See also the case of **In re Presidential Election Petition (No. 4) Akuffo-Addo & Ors. v. Mahama & Ors. [2013] SCGLR (Special Edition) 73**.

## ANALYSIS OF THE ISSUES

### Issue a

13. Issue a, thus, *whether or not Plot No. 141, Ward K Residential Area, Tamale and the property thereon belongs to the plaintiff*, 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**.

14. 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'..."

15. In the case **Ago Sai & Ors. v Kpobi Tetteh Tsuru III [2010] SCGLR 762**, the Supreme Court speaking through His Lordship Ansah JSC at page 779 also had this to say:

"This being an action for a declaration of title in land, the burden of proof and persuasion remained on the plaintiffs to *prove conclusively*, that on a balance of probabilities, he was entitled to his claim of title. This he could do by proving on the balance of probabilities the *essentials of their root of title and method of requiring title to the area in dispute...*" [Emphasis mine]

16. In effect, where the evidence is unsatisfactory, the judgment should be in the defendant's favour on the ground that it is the plaintiff who seeks relief but has failed to prove what he claims, see the case of **Dugabor v Akyea-Djamson [1984-86] 1 GLR 697 @ 709 CA**.

17. In light of the above authorities, the plaintiff therefore has an onerous burden to discharge in his claim for a declaration of title to land, more particularly when his claim is denied by the defendants. From his evidence-in-chief, plaintiff stated at paragraphs 2, 3, 4 and 7 as follows:

'2. I bought the disputed property as a bear land, later developed it into a 4-bedroom property. Copy of the property documents attached and exhibited as A (marked by the Court as Exhibit A).

3. After I built the property, my son was living in it for sometime when 1<sup>st</sup> defendant later took possession of the house.

4. Other members of the family have lived in the property with my permission since it was built.

...

7. I have made attempts to secure my interest in the house only to discover that the defendants have also made an attempt to register the property in their names."

18. Exhibit A, an application letter by the plaintiff for a 99year lease is hereby reproduced to give clarity as to his root of title:

"Mohammed Alhassan

C/O House No. B 23

Tamale

10<sup>th</sup> January, 2002

Dear Sir,

**APPLICATION FOR A 99 YEAR LEASE**

**WARD K RESD. AREA PLOT NO. 141 TAMALE**

I wish to apply for a 99 year-lease to cover the above mentioned property of mine. Please find enclosed herein *the relevant documents* for your study and necessary action.

I count very much on your co-operation.

Yours faithfully,



[Thumbprinted]

Mohammed Alhassan.

The Reg. Lands Officer

Lands Commission

Tamale." *[Emphasis mine]*

19. This is also what ensued when plaintiff was cross-examined by the 2<sup>nd</sup> defendant:

"Q: The land in question, did you acquire it from me or the chief?

A: I bought it from you.

Q: You acquired the said land from me, but the documents are still with me and the question is can you buy a land without documents to the land?

A: The document is with 1<sup>st</sup> defendant who is my brother. So when I bought the land the document was given to me but later taken away by the 1<sup>st</sup> defendant.

Q: You bought the land from me and I also released same to you. But your brother, 1<sup>st</sup> defendant came and took it from you, so why am I here in Court?

A: The 1<sup>st</sup> defendant told me that he gave the documents back to you.

...

Q: I want to know why 1<sup>st</sup> defendant claim he gave the document to me?

A: I do not know. It is left to you and 1<sup>st</sup> defendant to tell me why.

...

Q: I sold the property to you, later 1<sup>st</sup> defendant returned the documents to me, what was the rational in returning the documents?

A: I was told by 1<sup>st</sup> defendant that he has given the documents back to you.

Q: I am putting it to you that I have never sold anything to you?

A: It is you who sold the land to me.

Q: I am putting it to you that the site plan, the 99year lease and allocation are in my name and are still with me?

A: I insist that you sold the land to me."

20. It is unclear from the above, the root of title of the plaintiff. First, he did not attach the "relevant documents" in his application to the Lands Commission. If he did, the said "relevant documents" would have been attached for the attention of this Court. Secondly, he claimed the land document was given to him by 2<sup>nd</sup> defendant, but "taken away by the 1<sup>st</sup> defendant" and given back to the 2<sup>nd</sup> defendant.

Reason(s), not given. So, what “relevant documents” were forwarded to the Lands Commission in plaintiff’s application for the 99year lease? Also, is it now that plaintiff wants to register the property? If so, what happened to the application made in year 2002? What Search result shows that the defendants are presently registering the said plot in their names and that this court should restrain the defendants? It appears this court that the plaintiff is rather after the original documents of the land, but this was not part of his claim.

21. In respect of Exhibit C, the statutory declaration purporting to transfer the land to plaintiff by 2<sup>nd</sup> defendant, 2<sup>nd</sup> defendant maintains that he did not sign it. This Court is, therefore, enjoined to evaluate Exhibit C for what it is worth, see **Aryeh & Akakpo v. Ayaa Iddrissu [2010] SCGLR 891**. For what it is worth or weight to be attached to it, the Supreme Court in the case **Vivian Aku-Brown v Samuel Lanquaye Odartey [2016] DLSC 2833** stated that, “...in an action for declaration of title to land, *a statutory declaration by itself does not confer title on the declarant. A party relying on a statutory declaration in an action for title is required to lead credible and admissible evidence to prove the acts of ownership and possession referred to in the declaration.* See also the case of **Agbosu v Kotey [2003-2004] SCGLR 420.**” From the evidence, the plaintiff in relying on the said Exhibit C did not adduce any credible and admissible evidence to prove any acts of ownership or possession. He failed to show clear title. Hence, Exhibit C will not enure in his favour.

22. Regarding whether the property/house on the plot no. 141 Ward K Residential Area, Tamale belongs to the plaintiff, the plaintiff contends that the 2<sup>nd</sup> defendant had looked on for him to develop it, without any protest. This also the 2<sup>nd</sup> defendant denied. This is what ensued when 2<sup>nd</sup> defendant was under cross-examination:

“Q: Despite your claim of ownership of the land, you have watched the plaintiff develop it without any protest?

A: Your mother was accused of witchcraft and was driven away from where she was, by then I was closer to your younger brother by name Briamah who came to me and pleaded about the situation concerning your mother and needed a place to accommodate her. When your brother approached me and told me about the situation, by then I had 5 trips of river sand and 3 trips of gravel, I gave him the go ahead to put up that structure to accommodate your mother. That was why I did not protest during the construction of the said structure.

...

Q: Is it that you have registered it or registering it?

A: I have already registered it. The land in question has been in my possession over the past 40years.

Q: How did you acquire it?

A: My father was the then chief of that area. I had it through my father and he gave me the documents.”

23. From the evidence, the plaintiff failed to lead any evidence regarding putting up the said building. All that he stated was that after he built it, he did not live in the property, rather his son did until the 1<sup>st</sup> defendant later took possession. I find the

evidence of plaintiff not credible. See the case of **Ntim v Essien [2001-2002] SCGLR 451**. It rather appears to this court that the 2<sup>nd</sup> defendant allowed the late Briamah Alhassan who is the brother of the plaintiff to put up the building.

24. In the circumstance, I find that the plaintiff has not been able to lead sufficient evidence to enable this court grant him his reliefs. There are several doubts in his evidence and as the law states, in case of doubt then he must lose. See the cases of **Odametey v Clocuh, Kodilinye v Odu and Dugabor v Akyea-Djamson (supra)**.

25. Following from the above, issue 'b', *whether or not the present registration by the defendants should be halted by an order of this Court*, is therefore otiose/moot.

## CONCLUSION

26. The plaintiff's claim fails since he was unable to lead sufficient evidence to prove his case.

27. No order as to costs.

**H/W D. ANNAN ESQ.**

**[MAGISTRATE]**

1<sup>ST</sup> DEFENDANT ABSENT

2<sup>ND</sup> DEFENDANT APPEARED IN PERSON

SHIEKH-ARIF ABDULLAH FOR THE PLAINTIFF

### References:

1. *ss. 11(4), 12(1) and (2) 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. *Barima Gyamfi v Ama Badu [1963] 2 GLR 596*

7. *In re Presidential Election Petition (No. 4) Akuffo-Addo & Ors. v. Mahama & Ors.* [2013] SCGLR (Special Edition) 73
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. *Ago Sai & Ors. v Kpobi Tetteh Tsuru III* [2010] SCGLR 762
12. *Dugabor v Akyea-Djamson* [1984-86] 1 GLR 697 @ 709 CA
13. *Aryeh & Akakpo v. Ayaa Iddrissu* [2010] SCGLR 891
14. *Vivian Aku-Brown v Samuel Lanquaye Odartey* [2016] DLSC 2833
15. *Agbosu v Kotey* [2003-2004] SCGLR 420
16. *Ntim v Essien* [2001-2002] SCGLR 451