

IN THE DISTRICT COURT HELD AT AKIM OFOASE ON TUESDAY 18<sup>TH</sup> OCTOBER,  
2022 BEFORE H/W KEN. OKYERE-ABOAGYE AS MAGISTRATE.

SUIT No: ER/AF/DC/A1/11/22

YAW OHEMENG

v.

AKWASI ANTHONY

SAMUEL BOAKYE DANKWAH

JUDGMENT

On the 29<sup>th</sup> of June, 2022 Plaintiff commenced this action against Defendant seeking the following reliefs:

1. An order of the Court for Defendant to account for the proceeds realized from the four (4) acre cocoa farm located at 'Ahomamu" on Akim Kotokuom stool lands, sharing boundaries with Kwabena Agyapong and Akwasi Agyei which Defendant have forcefully taken over and harvesting same since 25<sup>th</sup> October, 2018 without the consent and authority of Plaintiff who is the successor. In lieu of that, Plaintiff claims GHc9,000.
2. An order of the Court to evict Defendant from the farm mentioned supra for Plaintiff to take possession of same.
3. Perpetual injunction restraining the Defendant, his heirs, assigns, privies, laborers, representatives etc. from having anything to do with the cocoa farm mentioned supra.
4. Costs.

Defendant pleaded not liable to all the reliefs of Plaintiff.

The summary of the subject matter of claim are that:

1. Plaintiff and Defendant are both farmers resident at Akim Kotokuom.
2. Plaintiff says his maternal uncle Akwasi Agyabeng broke the virgin forest of size four (4) acres and cultivated cocoa thereon for the Asona family of Kotokuom.
3. Plaintiff says that when Akwasi Agyabeng passed on, he was succeeded by Kwabena Amoah and Kofi Agyapong respectively.

4. Plaintiff says when his brother Kofi Agyapong passed on, he was elected by the family to succeed him.
5. Plaintiff says that Defendant, who is Kofi Agyapong's son, has forcefully taken over the farm without Plaintiff's authority and all efforts made for him to stop have proved futile and prayed the Court for redress.
6. Wherefore Plaintiff sues Defendant as per the reliefs sought and endorsed on his writ of summons.

On the 30<sup>th</sup> of May, 2022, Mr. Yaw Kankam prayed the Court to try and settle this matter out of Court and bring feedback, however, when granted the opportunity, he returned on the 14<sup>th</sup> of June, 2022 to say that parties had settled, but Plaintiff told the Court otherwise, for which reason the Court took over the matter accordingly.

On the 29<sup>th</sup> of June, 2022 Mr. Samuel Boakye Dankwah filed a motion on notice to join the suit, which motion was moved on the 7<sup>th</sup> of July, 2022. After hearing from the applicant in open Court and also reading the affidavit in support, the application was granted for Samuel Boakye Dankwah to join the suit as co-Defendant.

The evidence-in-chief of Plaintiff, Yaw Ohemeng a farmer resident at Akim Kotokuom had it that he knows D1 as his nephew and D2 as Asona family member who had joined their family. Plaintiff continued that his uncle Akwasi Agyabeng and his grandmother Adwoa Kyere brought their family stool from Asante Kokofu over a hundred years ago to Akim Kotokuom. Akwasi was a Twafohene so he was partitioning the lands whereby he demarcated some for himself to cultivate, which he did with Adwoa Kyere. Akwasi Agyabeng later brought Kofi Akomeng to help them on the farm of size eight (8) acres. They then divided the land into two (2) for Akwasi and Adwoa Kyere to manage individually. Plaintiff averred that the said land is located at a place commonly known and called "Ahomen" and it shares boundaries with Kwame Agyapong, Osey Manu, Agya Abu and one Ahenkorah. Akwasi Agyabeng left his cultivated cocoa farm in the care of one Kwadwo Donkor. Akwasi Agyabeng passed on in 1959 in Ashante and was succeeded by Kwabena Amoah and when Kwabena Amoah also passed on, he was succeeded by Plaintiff's brother Kofi Agyapong. Plaintiff averred further that when Kofi Agyapong passed on in 2018, he was succeeded by Plaintiff, however, when Akwasi was alive, his son D1 was taking care of the farm, but after Kofi's death, D1 has refused to account for the share proceeds to Plaintiff, which is why the matter is in Court. Plaintiff claimed that D1 harvests about four (4) times in a year and realizes about ten (10) bags of dried cocoa beans and that Plaintiff's share is 2/3 portion.

The evidence of PW1, Felicia Frimpomaa, a farmer resident at Kotokuom had it that she knows Plaintiff as her paternal uncle, D1 as a half sibling and D2 as a cousin. PW1 continued that about two (2) months ago, Plaintiff informed her that D1 had been cultivating the family's cocoa farm without giving Plaintiff any share. PW1 averred further that when she was young, Opanin Akwasi Agyabeng was handling the farm and when he passed on, Opanin Kwabena Amoah succeeded him; after him was her father Opanin Kofi Agyapong then Plaintiff herein succeeded Kofi Agyapong. She doesn't know the size of the land, neither does she know the boundary neighbors, however, the farm is located at a place commonly known and called as "Tebre".

The evidence of PW2, Afia Kodie a farmer resident at Kotokuom had it that she knows Plaintiff as an uncle and Defendants as cousins. PW2 continued that her grandfather Bergyabeng broke the virgin forest at "Ahomem" on Akim Kotokuom stool lands and that it was initially eight (8)-acres, then he divided it into two (2) and gave half to his sisters Yaa Mansa and Adwoa Kassa. The said land shares boundaries with Papa Agyapong, Opanin Ahenkorah, and two others whose names witness had forgotten. PW2 averred that Yaa Mansa gave their portion to PW2 and one Yaa Monica. PW2 averred further that their mother is called Ama Adade. When Opanin Bergyabeng passed on, one Kwabena Amoah succeeded him and then followed by Opanin Agyapong, but Opanin Agyapong couldn't manage the cocoa farm so he asked 1<sup>st</sup> Defendant to take care of it. PW2 averred further that whilst 1<sup>st</sup> Defendant was taking care of the cocoa farm, he replaced some of the dead cocoa trees. Then when Opanin Agyapong passed on, Plaintiff herein was made to succeed him. The elders asked Plaintiff to bring someone to represent the stool (Twafohene) which made Plaintiff elect 2<sup>nd</sup> Defendant. Then a chief died and 2<sup>nd</sup> Defendant was asked to bring word that there was the need to pay GHc100 donation so 2<sup>nd</sup> Defendant told Plaintiff where Plaintiff demanded the share proceeds 2<sup>nd</sup> Defendant took from 1<sup>st</sup> Defendant, but 2<sup>nd</sup> Defendant told Plaintiff he put the money in his shoes, but it was missing. So Plaintiff asked 2<sup>nd</sup> Defendant not to go to the palace as a representative, so 2<sup>nd</sup> Defendant never went back to the palace till date and with this, Plaintiff closed his case.

The evidence of Defendants was given by 1<sup>st</sup> Defendant who was elected to give evidence for himself and also on behalf of the 2<sup>nd</sup> Defendant. 1<sup>st</sup> Defendant gave his name as Akwasi Anthony, a farmer resident at Kotokuom and Plaintiff herein is his paternal uncle and 2<sup>nd</sup> Defendant is his cousin. According to 1<sup>st</sup> Defendant, in 2004 his father Kofi Agyapong showed him a piece of land at a place commonly known and called "Ahomem" on Akim Kotokuom stool lands of size two (2)-acres with boundary neighbors as Opanin Kwaku Agyapong, Opanin Ahenkorah, Opanin Abu and Opanin

Kwasi Agyei. 1<sup>st</sup> Defendant averred that his father asked that he cultivated cocoa and share the proceeds with him, so he started the farm in February, 2004 and around August, 2004 an auntie was passing by called Afia Maanu where she exclaimed that “who has cleared our land”. Afia Maanu then asked 1<sup>st</sup> Defendant who gave him the land, where 1<sup>st</sup> Defendant mentioned his father. D1 claimed that his auntie Afia Maanu came home later that evening and had a conversation with his father and later told D1 that the land he was cultivating is a stool land (purposely for the Twafohene) so if he doesn’t pay goodwill, and his father passed on, it would be taken over by the family. D1 averred that, a week later he went with Teacher Ntiamoah, his aunt Yaa Opokua, and met his father, auntie Afia Maanu and Yaw Kwaning. D1 averred further that his father disclosed that he had granted the said land to D1 for the cultivation of cocoa on “abunu” terms which he started sharing the beans with his father after seven (7) years. However, after a while, according to D1, his father allowed him to harvest, dry and sell and bring him his share proceeds. D1 averred further that later, his father agreed that he shared the proceeds into three (3) and give him 1/3 portion so that D1 would use 1/3 to take care of the cocoa farm. D1 averred further that after about two (2) years, his father informed him that because he had not been able to go to the palace, he had been asked to elect someone to represent him at the palace so that he would be duly informed of issues accordingly. Later Nana Gyasehene and abusuapanin Kankam invited D1 to the palace around 2016 and said D2 had been selected by abusuapanin Kankam to represent Kofi Agyapong so D1 should share the proceeds of the cocoa farm with D2. However, D2 asked that D1 should continue sharing with his father Kofi Agyapong until his demise before D1 should share with D2. D1 averred that his father passed on in 2018 where he started sharing with D2, then in 2019, after the one-year observation of his father’s death, Nana Gyasehene and Abusuapanin Kankam invited D1 and in the presence of Plaintiff herein, Adwoa Owiredua, auntie Afia Maanu, Yaw Kwaning and others and told him to cease sharing with D2 and share the proceeds with Nana Kankam, so in 2019 he accounted to Nana Kankam, then in 2020, D1 lost his brother Kwame Dada so they informed Plaintiff about it where Plaintiff asked D1 to borrow money from Nana Kankam for the funeral and that Plaintiff will refund later. D1 averred further that he went with Plaintiff, one Teacher Addae to borrow GHc1,100 for the funeral in 2021. According to D1, Sister Adwoa Owiredua, Yaw Boampong, Yaw Kwaning and Kwadwo Ankamah invited him to Nana Gyasehene’s house where he met Nana Kankam and Kofi Agyei and though Plaintiff was sent for, he refused to show up saying it was late. He was informed that Plaintiff herein had gone to Nana Kankam for the proceeds from the cocoa so D1 should stop accounting to Nana Kankam and that he should give the share proceeds to one Kofi Kyei, the Cocoa

Purchasing Clerk so he started giving him the share proceeds, then Plaintiff herein had brought him to Court.

The evidence of DW1, Afia Maanu a farmer resident at Kotokuom had it that she knows Plaintiff as a cousin, D1 as a nephew and D2 as a cousin. According to DW1, the disputed land is of size 2-acres and at a place commonly known and called "Tebre" on Akim Kotokuom stool lands and that an uncle Bergyabeng succeeded one Appiah who brought the stool from Asante. Kwabena Amoah succeeded Bergyabeng and then Nana Berko also called Agyapong succeeded. When Kwabena Amoah passed on, one T. A. Bediako told Agyapong to use the stool land to cultivate cocoa and use to the proceeds to renovate the dilapidated family house. However, Agyapong couldn't cultivate the cocoa and that she saw D1 cultivating the said land where she enquired who authorized him, then D1 mentioned his father Agyapong. According to DW1, she then asked for the agreement because the land is a family land where she asked D1 to seek to do the needful so that everyone would know that he had cultivated the cocoa farm. DW1 averred that D1 gave a drink offering but she couldn't attend that meeting because she was looking after a baby and that she was given GHc5 as her share after the meeting. DW1 claimed that D1 was sharing with Agyapong, but after he passed on, Plaintiff elected D2 to act so D1 was then sharing with D2. Currently, Abusuapanin Kankam is the one receiving the share proceeds that D2 was taking. Plaintiff herein had gone to abusuapanin Kankam to collect all the proceeds from him saying that the said land is for his mother and if it belongs to the stool, he is to take the proceeds.

The evidence of DW2, Opanin Yaw Kankam a farmer resident at Akim Kotokuom and also the head of family of the Asona family at Kotokuom had it that he knows Plaintiff as a family member, D1 as a nephew and D2 as a family member. According to DW2, he knows that Opanin Agyabeng was the Twafohene of the Asona family about thirty (30) years ago which had a cocoa farm and lands attached to the stool, so whoever succeeds on the stool, operates the properties. When Opanin Agyabeng passed on, he was succeeded by Opanin Kwabena Amoah as the Twafohene. He also passed on about twenty-five (25) years and was succeeded by Opanin Agyapong and when he was old, the family asked that someone be elected to represent him at the palace so one Yaw Panin was elected to do that. DW2 averred that there was a funeral at Kortwea Asante so the elders went and on their return, they said a cocoa farm located at Ahomem had scanty trees so Opanin Agyapong was asked to rehabilitate it, but he didn't do it, rather handed it over to his son Anthony (D1 herein). When the family noted D1 was working the land of size three (3)-acres, he was invited for the matter to be discussed before allowing him to continue working the land. When the cocoa was ready, D2 was sharing with his father

because his father Agyapong Berko was still the occupant of the stool. When Agyapong Berko passed on three (3) years ago, there was no one occupying the Twafohene stool so the family decided that D1 should share the proceeds with DW2 so in 2019, D1 gave him GHc400 as share proceeds, then along the line Plaintiff came to him saying that his brother Berko's wife had passed on in Bontodiase so he borrowed the GHc400 to perform the funeral after he had informed the family. DW2 averred further that since then, D2 never shared the proceeds with DW2 again, then in 2021 D1 told DW2 that Plaintiff had had another funeral so he wanted D1 to borrow money for him from the Purchasing Clerk and since then, D1 and Plaintiff had been using the share proceeds to pay back the said loan. DW2 claimed that he heard nothing about it until this matter came to Court and with this, Defendants closed their case.

The issue before the Court for determination is whether or not Plaintiff herein is entitled to his claims:

On the first issue of an order of the Court for Defendant (D1) to account for the proceeds realized from the four (4) acre cocoa farm located at 'Ahomamu" on Akim Kotokuom stool lands, sharing boundaries with Kwabena Agyapong and Akwasi Agyei which Defendant have forcefully taken over and harvesting same since 25<sup>th</sup> October, 2018 without the consent and authority of Plaintiff who is the successor. In lieu of that, Plaintiff claims GHc9,000.

This matter being a land suit, Plaintiff is expected to lead evidence in proof of his title. In the case of **Agyekum v. Amoah, Civil Appeal No. J4/59/2014, dated 13<sup>th</sup> April 2016 (unreported)**, it was held that in civil trials, the standard of proof is that of a balance of probabilities. See also **sections 11 (4) and 12 of the Evidence Act, 1975 (NRCD 323)** and the case of **Sarkodie v. FKA Co. Ltd. [2009] SCGLR 65, S.C. at holding 1.**

The Court had noted from the evidence of Plaintiff and his witnesses that Plaintiff herein had succeeded Opanin Agyapong as the Twafohene and that he is the one currently supposed to be occupying the stool. When D1 cross-examined Plaintiff, these are some of the questions that were asked:

Q - who made you a successor?

A - Opanin Yaw Kankam

Q - which year was that

A - 2018

Q - put- you were made to succeed his personal effects, but D2 was elected to succeed the stool.

A - Not true, no one was made to succeed the stool.

The evidence of 1st Defendant was to the effect that his father Opanin Agyapong gave him a two (2)-acre piece of land to cultivate cocoa thereon for them to share the proceeds. Now this piece of the land happens to be a stool land and that there is no dispute to it. 1<sup>st</sup> Defendant also mentioned that he was told by his auntie to do the needful otherwise on the death of his father Opanin Agyapong who was the occupant of the stool, the family would take the farm from him. This evidence of Defendant is neither here nor there because he had only acted as a tenant farmer; having cultivated the stool land with cocoa or having rejuvenated the cocoa farm thereon for the occupant of the stool, therefore nobody can seek to deny him of the fruits of his sweat. 1<sup>st</sup> Defendant also stated that his father Opanin Agyapong made D2 to represent him at the palace when he was old so as to bring word from the palace. This action of Opanin Agyapong, if indeed was the truth, only makes D2 a messenger, therefore after the death of Opanin Agyapong, D2 has no right to take the share proceeds that belong to the late Twafohene and pocketing same as if he is new occupant of the stool.

The evidence of DW1, Afia Manu corroborated that of 1<sup>st</sup> Defendant and also added that after the death of Opanin Agyapong, Plaintiff herein elected D2 to act at the palace so D2 was sharing the proceeds from the cocoa farm with D1. The Court is wondering why D2 would share the proceeds of the farm with D1 without sending the share he received to Plaintiff if he asked him to represent at the palace?

The evidence of DW2, Opanin Kankam was to the effect that no one had been enstooled as the new Twafohene after the death of Opanin Agyapong. This is the same person Plaintiff mentioned to the Court as having made him (Plaintiff) the successor to Opanin Agyapong. Opanin Kankam also added that the family decided that the share proceeds from the stool land should come to him, so he received the first one in 2019 but had not received any more since. When Plaintiff cross-examined DW2, these were some of the questions that were asked:

Q - are you invited to sit in the Twafohene's palace

A - No, but when the matter is huge, I am invited.

Q - who was made to succeed Opanin Agyapong after his demise.

A - Plaintiff was made to succeed his personal effects, but for the stool, no one had been elected.

Q - Who is the eldest male member of the Kortwea family currently

A - Plaintiff

The Court noted that Plaintiff herein tried very hard to throw dust into the eyes of the Court since he mentioned Opanin Yaw Kankam as having made him the successor to the stool, then made a U-turn by saying that no one had been made to succeed the stool. It is however obvious that Plaintiff's quest to succeed the Twafohene's stool before a successor is chosen has come to such a gloomy end. He sort to fly without realizing that he has no wings. Therefore, Plaintiff's application is dismissed and I hold so accordingly.

There is no order as to costs.

H/W Ken. Okyere-Aboagye

(District Magistrate).