

IN THE TDC DISTRICT COURT HELD AT TEMA ON FRIDAY, THE 18TH
DAY OF NOVEMBER 2022 BEFORE HER HONOUR AKOSUA
ANOKYEWAA ADJEPONG (MRS.), CIRCUIT COURT JUDGE, SITTING AS
AN ADDITIONAL MAGISTRATE

SUIT NO. A9/29/18

OSHANG DZAGBLEY ANUM
SUBSTITUTED BY NICHOLAS OKAINE ----- PLAINTIFF
H/NO. F16, NEW TOWN
TEMA

VRS

EFO SETH ----- DEFENDANT
TEMA NEW TOWN

PARTIES : PLAINTIFF'S SUBSTITUTE PRESENT
DEFENDANT PRESENT

COUNSEL : PORCIA AHIAWODOR HOLDING THE BRIEF OF
PROSPER NYAHE
ESQ. FOR PLAINTIFF PRESENT
PAUL K. DANSO AMOAKO HOLDING THE BRIEFF OF
KORBLA
HLORTSI-AKAKPO ESQ. FOR THE DEFENDANT
PRESENT

JUDGMENT

The Plaintiffs herein, caused a Writ of Summons to be issued in this Court which was subsequently amended. In the Amended Writ of Summons pursuant to leave of Court filed on 9th May 2018, the Plaintiffs claim against the Defendant for the following reliefs:

1. Declaration of title to all that piece or parcel of land situate and being at Abonko, Tema Newtown, measuring 50 x 15 and bounded on the South by 1st Plaintiff's land and on the West by a walk way/footpath.
2. An order for recovery of possession of all that piece or parcel of land situate and being at Abonko, Tema Newtown, measuring 50 x 15 and bounded on the South by 1st Plaintiff's land, on the North by a road, on the East by 1st Plaintiff's land and on the West by a walk way/footpath.
3. Perpetual injunction restraining the Defendant, his agents and assigns, privies, workmen and all people claiming through him from entering and dealing in any manner with the 1st Plaintiff's land, the subject matter of the suit.
4. An order directed at the Defendant to pay an amount of GH¢950.00 being rent arrears from 1st September 2014 to 31st October 2017.
5. An order directed at the Defendant to pay the agreed monthly rent of GH¢25.00 from 1st November 2017 to date of judgment.
6. Cost.

On 21st June 2018, the Defendant filed an Amended Statement of Defence and Counterclaim pursuant to leave by this Court which was further amended on 19th February 2020 with leave of Court. The Defendant denied liability of all the claims and stated that the Plaintiffs are not entitled to any of their reliefs. The Defendant further counterclaimed as follows:

- i. Declaration that the Plaintiffs lack capacity to deal with any property of the late brother whether already sold or not.
- ii. Declaration of title to the parcel of land described as follows:
 - a. On one side by property of Amegashi measuring 52ft or more or less on that side;
 - b. On another side by the property of Oshang Dzabley measuring 52ft more or less on that side;
 - c. On another side by a footpath measuring 40ft more or less on that side;
 - d. On the last side by a property of an unknown person measuring 40ft more or less on that side.
- iii. Injunction restraining the Plaintiffs, by themselves, their agents, successors, assigns and privies or any person claiming through them in whatsoever capacity from interfering with the peaceful possession and enjoyment of the said land.
- iv. Costs.
- v. Any other reliefs as the Honourable Court may deem expedient.

The Plaintiffs subsequently filed a Reply and Defence to the Defendants' Statement of Defence and Counterclaim on 3rd July 2018.

THE CASE OF THE PLAINTIFF

It is the Plaintiff's case that the Defendant is a tenant on the Plaintiff's land at Tema Newtown. That she is the legal owner of the piece of land in dispute and that she acquired same including a larger tract of land in 1994 from the Tema

Traditional Council, measuring 120 x 70 lying and situate at Abonkor, Tema New Town. She tendered copies of the documents covering the allocation of the said land and the site plan as exhibits 'A' series and 'B' respectively. That she took immediate possession of the land by constructing a building on it. She tendered exhibit 'C' which is a photograph of a house. That she has given out portions of the land to other tenants including the Defendant who approached her in 1999 to rent a portion of her land for the purpose of erecting a wooden structure on it as temporary accommodation. That upon the intervention by her late brother she granted the piece of land in dispute to the Defendant for an annual rent of GH¢300.00. According to the Plaintiff, in 2014 she decided to regularize all tenancies by issuing written tenancy agreement to all the tenants on her land. That the Defendant has defaulted in the payment of the agreed rent since 2014 after the initial payment of GH¢200.00. She tendered exhibits 'D' series and 'E' being photographs of structures and a tenancy agreement between the Plaintiff and the Defendant. Exhibit 'F' which is a photograph of bathroom and place of convenience and the Defendant's structure was tendered. That she asked the Defendant to vacate the land as a result of his refusal to pay the agreed rent but he has refused to vacate the land. That unless the Defendant is compelled by this Court he shall not desist from his unlawful act.

The Plaintiff called two witness as PW1 and PW2.

PW1, Nii Shippi Armah told the Court in his Witness Statement that he has been the secretary of the Tema Stool Land Allocation Committee and knows the Plaintiffs in this matter. He continued that he knows the subject matter land and it is the legitimate property of the 1st Plaintiff which was granted to her by the Tema Traditional Council in 1994 upon her application. That he knows the Plaintiff's late brother Adjei Tsongbe who used to be the chief fisherman. That

they do not have records of him owning any land at Tema New Town, Abonko neither does the Council's records indicate that he was granted any land at Abonko. He further stated that he does not know the Defendant; that the Council did not grant any land to the Defendant and he has also not applied to the council for a land. He concluded that the Council does not have any records of an application by the late brother of the 1st Plaintiff to register any land in the name of the Defendant.

Under cross examination, PW1 testified that the size of the Plaintiff's land could be 100x70 or more and that the 60x60x60x45 is an anomaly which they wrote to TDC to correct same.

PW2, Nicholas Armah Ashitey stated in his Witness Statement that he is the linguist of the Tema Traditional Council and works with the TMA Task Force. That he got to know the 1st Plaintiff when she reported the Defendant to the TMA Task Force as she filed a complaint against the Defendant in 2012 with him for his refusal to pay rent. That they wrote 'REMOVE' notice on the Defendant's structure and the Defendant approached him subsequently to admit that he owes the 1st Plaintiff and that he should intervene on his behalf to be allowed some time to settle the outstanding rent but he refused to intervene and asked him to see the 1st Plaintiff himself. That he personally witnessed the Defendant's attempt to pay the amount of GH¢400.00 as part payment of rent to the 1st Plaintiff but she rejected it because it was woefully inadequate and she insisted on removal of the Defendant's structure on her land. That the 1st Plaintiff has made a lot of efforts to retrieve rent from the Defendant but to no avail.

The Plaintiff closed her case thereafter.

THE CASE OF THE DEFENDANT

The Defendant denied the claims of the Plaintiff in his defence and counterclaimed that the land in dispute used to be a swampy area as same was used as a piggery. That the Plaintiff's deceased brother (Adjei Tsongbe) granted to him the said swampy land in 1997. That he paid ₵200,000.00 to the said brother of the Plaintiff who said he was using it to register the land in the chief's house. That the said brother in or about 1999, introduced to him the Plaintiff as his younger sister who needed part of the land he had filled which he complied and gave her one part of the land. That in or about 2013 he paid GH₵700.00 as final payment of the land to the said brother. That he had not completed the necessary documents before he passed away. That the Plaintiff is aware of all the moneys he had paid to her late brother for the said land. That the Plaintiff's action is statute-barred by virtue of the Limitations Act 1972 (NRCD 54). That the Plaintiff's action is estopped by virtue of the plea of laches and acquiescence.

In his evidence, the Defendant gave his name as Seth Sebukpor a.k.a. Efo Seth. He repeated the assertions in his pleadings when he gave evidence and did not tender any exhibit. He added that he knows Gabriel Akakpo Buamah as tenant of the 1st Plaintiff when he entered his land, that the structure of the said Gabriel is located at the end or the last part of the 1st Plaintiff's land and same shares boundary with the disputed land. That the 1st Plaintiff through her late brother who was his landlord put up bathroom and toilet on the part of the land he did not build on. That apart from Gabriel Buamah Akakpo he does not know any other tenant, since all other tenants came along after he had put up his structure.

The Defendant did not call witness and thereafter closed his case.

It is important to note that the 2nd Plaintiff was a nominal party to the action as he did not give evidence during the hearing.

It is equally noteworthy to mention that during the pendency of the suit, that is after the hearing had come to an end and before the Court will deliver its judgment, the 1st Plaintiff passed away and since the cause of action survived her death, this Court granted an order on 7th February 2022 to substitute the 2nd Plaintiff Nicholas Okaine as the Plaintiff for the deceased Plaintiff, and the 2nd Plaintiff was struck out as a party to the suit; upon an application by counsel for the Plaintiff. The substituted Plaintiff duly amended the Amended Writ of Summons and Amended Statement of Claim to reflect the substitution and same was served on the Defendant.

The legal issues to be determined are:

1. *Whether or not this Court has jurisdiction to determine the instant suit.*
2. *Whether or not the Plaintiff's action is caught by the Limitations Act and therefore same is statute barred; and also caught by plea of estoppel by laches and acquiescence.*
3. *Whether or not the land in dispute is the property of the late brother of the Plaintiff; and therefore the Plaintiff lacks capacity to deal with same.*
4. *Whether or not the Plaintiff was allocated the land in dispute by the Tema Traditional Council.*

5. *Whether or not the Plaintiff rented the land in dispute to the Defendant and as a result Defendant owes the Plaintiff an amount of GH¢950.00 being rent arrears from 1st September 2014 to 31st October 2017.*
6. *Whether or not there was an agreed monthly rent of GH¢25.00 by the parties herein.*
7. *Whether or not the Plaintiff is entitled to the reliefs endorsed on the Amended Writ of Summons.*
8. *Whether or not the Defendant is entitled to the reliefs contained in his Counterclaim.*

In civil cases, the general rule is that the party who in his pleadings raises an issue essential to the success of his case assumes the onus of proof. See **Sections 10, 11(1) and (4) and 12(1) and (2) of the Evidence Act, 1975 (NRCD 323)**.

Section 12(1) of the Evidence Act, 1975 (NRCD 323), provides that:

“except as otherwise provided by law, the burden of persuasion requires proof by a preponderance of probabilities.”

In the case of *Adwubeng v. Domfe [1996-97] SCGLR 660*, the Supreme Court held thus:

“Sections 11(4) and 12 of the Evidence Decree, 1975 (NRCD 323)... have clearly provided that the standard of proof in all civil actions was proof by preponderance of probabilities – no exceptions were made.

Section 11(4) of the Evidence Act explains the burden of proof in civil cases as follows:

“In other circumstances, 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-existence”.

In the case of **Memuna Amoudi v. Kofi Antwi, Part 3, [2006] MLRG, 183 at 195,** the Supreme Court per Wood, JSC (as she then was) stated:

“A cardinal principle of law on proof ... is that a person who makes an averment or assertion ... has the burden to establish that his averment or assertion is true. He does not discharge his burden unless he leads admissible and credible evidence from which the fact or facts he asserts can be properly and safely inferred.”

In the case of **Fosua & Adu-Poku v. Adu-Poku Mensah-Ansah [2009] SCGLR 310,** the Supreme Court held that where the Plaintiff is able to produce sufficient evidence to prove his case then the onus shifts to the Defendant to lead evidence that would tilt the balance of probabilities in his favour. This principle is found in Section 14 of the Evidence Act, supra, which provides as follows:

“Except as otherwise provided by law, unless it is shifted a party has the burden of persuasion as to each fact, the existence or non-existence of which is essential to the claim or defence that party is asserting.”

Also, in the case of **In Re: Ashalley Botwe lands; Adjetey Agbosu and Others v. Kotey and Others (2003-04) SCGLR 420,** Brobbey JSC interpreted section 11(1) of the Evidence Decree 1975 (N.R.C.D 323) at pages 464 to 465 and held that:

“A litigant who is a Defendant in a civil case does not need to prove anything; the Plaintiff who took the Defendant to Court has to prove what he claims he is entitled to from the Defendant. At the same time, if the Court has to make a determination of a fact or of an issue, and the determination depends on

evaluation of facts and evidence, the Defendant must realize that the determination cannot be made on nothing. If the Defendant desires the determination to be made in his favour, then he has the duty to help his own cause or case by adducing before the Court such facts or evidence that will induce the determination to be made in his favour....”.

I shall now examine and evaluate the evidence adduced by the parties in support of their respective cases within the context of their corresponding burdens and the prescribed standard of proof as provided under *the Evidence Act, 1975 (NRCD 323)* to resolve the above issues.

1. Whether or not this Court has jurisdiction to determine the instant suit.

From the amended Writ of Summons of the Plaintiff, the Plaintiff claims against the Defendant declaration of title to the land in dispute, an order for recovery of possession and perpetual injunction against the Defendant. The Plaintiff also claims that Defendant is a tenant on her land at Tema Newtown as she is the legal owner of the land in dispute. That the Defendant has refused to pay the agreed rent since 2014 after the initial payment of GH¢200.00 and also refused to vacate so the Court should compel the Defendant vacate the land.

Counsel for the Defendant in his written address filed for and on behalf of the Defendant herein stated on pages 10 and 11 that from the pleadings in the amended statement of claim, the Plaintiff is essentially in Court to recover rent arrears of GH¢950.00 and other reliefs. He cited some authorities to the effect that for rent related matters in respect of a property situate at Tema, such as the instant case, the appropriate forum is the rent control office in Tema for

consideration and determination by the rent officer. That this Court lacks jurisdiction as the Court of 1st instance and that it is only when a party is dissatisfied or aggrieved by the decision of the rent officer that this Court can effectively assert its jurisdiction to determine the instant suit. He invited the Court to hold that it has no jurisdiction to determine the instant suit and to decline jurisdiction to determine the matter.

Counsel for the Plaintiff submitted that this is not a matter of landlord tenant simpliciter but a determination of title to land and so the jurisdiction of the Court has been properly invoked.

It is unfortunate that counsel for the Defendant with all the authorities he cited to support his submission that this Court does not have jurisdiction to hear landlord-tenant matters, did not avert his mind to the Court Acts that confers jurisdiction on the District Court as the District Court is a creature of statute.

It is trite learning that the Statute that creates a particular Court confers jurisdiction on the said Court. The *Courts Act, 1993 (Act 459) as amended* confers jurisdiction on the Courts in various matters.

The Courts Act, 1993 (Act 459) as amended confers jurisdiction on the District Court to determine matters relating to landlord and tenant of any premises. Act 459 did not provide that the District Court can only entertain landlord-tenant matters that have been referred to the District Court by the rent control office. There is no such provision in Act 459 which gives jurisdiction to the District Court to the effect that the District Court cannot at first instance entertain landlord-tenant matters.

Section 47 (1) (d) of the Courts Act as amended, provides as follows:

“A District Court shall within the area of its jurisdiction have civil jurisdiction in civil causes or matters relating to the landlord and tenant of any premises or any person interested in such premises as required or authorised by any law relating to landlord and tenant;”

Per the long title of the Courts Act as amended, it is an Act to incorporate into the law relating to the Courts, the provisions of chapter eleven of the constitution; to provide for the jurisdiction of Regional Tribunals; **to establish lower Courts and tribunals, provide for their composition and jurisdiction;** to consolidate and re-enact the Courts Act, 1971 and to provide for connected purposes. [Emphasis mine]

Accordingly, the District Court is properly clothed with jurisdiction to hear landlord and tenant matters as the first instance Court and not strictly only referrals from the rent control office. I therefore hold that the District Court and for that matter, this Court has jurisdiction to determine the instant suit.

2. Whether or not the Plaintiff's action is caught by the Limitations Act and therefore same is statute barred; and also caught by plea of estoppel by laches and acquiescence.

From the evidence before the Court, the Plaintiff's action is not caught by the Limitation Act neither is it caught by plea of laches and acquiescence as the Defendant pleaded in his defence. This is because the evidence on record suggests that the Plaintiff has been asking the Defendant to vacate from her land through the TMA and the Defendant admitted in his evidence that TMA went to write 'REMOVE' notices on his structure even when the Plaintiff's brother was

alive. Therefore it cannot be said that the Plaintiff's action is caught by the Limitation Act or estopped by acquiescence and I accordingly find so.

3. *Whether or not the land in dispute is the property of the late brother of the Plaintiff; and therefore the Plaintiff lacks capacity to deal with same.*

The Defendant stated that the land in dispute was for the brother of the Plaintiff who leased it to him and therefore the Plaintiff does not have capacity to deal with same. The Plaintiff vehemently denied this assertion and stated that it was through the said brother that made her rent the land in dispute to the Defendant as he introduced him to her but the land does not belong to the said brother. The Plaintiff having denied the assertion of the Defendant, there was a legal burden on the Defendant to adduce sufficient evidence to establish his allegation which was denied but he could not lead any evidence to that effect. The Defendant only repeated his assertions in his defence and counterclaim.

In the case of *Adjetey Adjei & Ors. v. Nmai Boi & Ors. [2013-2014] 2 SCGLR 1474*, Adinyira JSC held:

“... It is trite law that pleadings would not constitute evidence. To hold otherwise would negate t

Also PW1 in his evidence told the Court that the Plaintiff's brother per their records does not have any land in that area but rather it is the Plaintiff who has a land that covers that area the Defendant's structure is situated. Even though PW1 did not tender the said record he referred to, the Defendant who had the legal burden to substantiate his claim did not tender any document or even call witness to support his claim that the Plaintiff's brother granted him the land in dispute.

It is important to note *section 11(1) of the Evidence Act N.R.C.D 323* which defines burden of producing evidence. It states thus:

“...the burden of producing evidence means the obligation of a party to introduce sufficient evidence to avoid a ruling against him on the issue.”

Although the burden of persuasion is on the Plaintiff, the burden of producing evidence may shift from one party to the other.

In the case of *Sumaila Bielbiel v. Adamu Dramani and AG (No. 3) [2012] 1 SCGLR 370*, Date-Bah JSC noted thus:

“Ordinarily, the burden of persuasion lies on the same party as bears the burden of producing evidence. However, depending upon the pleadings or what facts are admitted, the evidential burden can move on to a Defendant.”

The Defendant in this case alleged in his pleadings that the Plaintiff’s brother granted the land in dispute to him and further stated that the Plaintiff does not have capacity to deal with the land. The legal principle is that he who alleges must prove. Thus this was an issue which required the Defendant to introduce sufficient evidence to prove that indeed the Plaintiff’s brother gave the said land to him. However, the Defendant failed to adduce any evidence on the said assertion.

In the case of *Boakye v. Asamoah [1974] 1 GLR 38 at 45*, the Court held that:

“legal or persuasive burden is borne by the party who would lose the issue if he does not produce sufficient evidence to establish the facts to the requisite standard imposed under section 10 of the Evidence Act, 1975 NRCD 323 that is, by a preponderance of probabilities.”

The Defendant bore the legal burden and was thus required to prove that indeed the land in dispute was granted to him by the late brother of the Plaintiff as he asserted in his defence. This, the Defendant could not discharge because he did not lead any evidence in support of that. Consequently, the said assertion is dismissed for lack of evidence.

4. *Whether or not the Plaintiff was allocated the land in dispute by the Tema Traditional Council.*

The Plaintiff in her evidence told the Court that she made an application to the Tema Traditional Council for an allocation of land and she acquired a larger tract of land in 1994 measuring 120 x 70 lying and situate at Abonkor, Tema New Town which includes the land in dispute from the Tema Traditional Council. To support her assertion she tendered copies of the documents covering the allocation of the said land and the site plan as exhibits 'A' series and 'B' respectively.

A careful examination of exhibit 'A3' indicates that the on 14th June 1994, the Tema Traditional Council allocated plot no. SW/168A measured 60 x 60 x 60 x 45 to the Plaintiff. Exhibit 'A4' further indicates that the Tema Traditional Council later wrote to the Director of Estates at the TDC to inform the TDC that plot number SW/168A allocated to the Plaintiff has been realised to be SW/59 instead. That they should do them this favour of amending their records accordingly.

PW1 told the Court under cross examination that the Tema Traditional Council made an error in the size and therefore they wrote to TDC to rectify same. That he does not know whether they have done it or not. However, there is no

evidence before this Court that the Tema Traditional Council wrote to the TDC in 2001 to rectify an error in the size of the Plaintiff's land that was allocated to her. The evidence before this Court suggests that it was the plot number that was changed and that letter being exhibit 'A4' did not mention the size of the Plaintiff's land. However, on exhibit 'B' the plot number of the Plaintiff suggests that it is 120 x 70.

From the evidence before this Court it is not in doubt that the Plaintiff was allocated a land by the Tema Traditional Council, what is in issue is whether the land in dispute is part of the land that Plaintiff was allocated by the Tema Traditional Council. In her evidence Plaintiff told the Court that she gave out portions of the land to other tenants including the Defendant to rent a portion of her land for the purpose of erecting a wooden structure on it as temporary accommodation. The Defendant denied the said claim and told the Court that it is the Plaintiff's brother who leased the land to the Defendant. The Plaintiff also told the Court that the Defendant was introduced to her by the said brother before she agreed to rent part of her land to him. From the evidence before this Court, particularly exhibit 'F', the Defendant's structure is on a land that is very close to the Plaintiff's land where the Plaintiff has tenants on her land and the Defendant confirmed that he went to meet one of the Plaintiff's tenants already on her land. The Defendant tells the Court his land shares boundary with the Plaintiff's land but the Defendant could not lead an iota of evidence as to his assertion in his counterclaim that the Plaintiff's brother leased the land his structure is on, to him.

On the balance of probabilities and the weight of the evidence of the parties before this Court, the Plaintiff has been able to prove that her story is more probable than that of the Defendant, given that the Defendant could not lead any

evidence as to his claim except to repeat his assertion in his pleadings. Accordingly, I find from the evidence that the land in dispute was allocated to the Plaintiff by the Tema Traditional Council.

5. *Whether or not the Plaintiff rented the land in dispute to the Defendant and as a result Defendant owes the Plaintiff an amount of GH¢950.00 being rent arrears from 1st September 2014 to 31st October 2017.*

The Defendant told the Court that when he entered the land Plaintiff was there and had one tenant there. The Plaintiff stated that she rented the land in dispute to the Defendant but under cross examination, she denied the tenancy agreement between her and the Defendant which she tendered as exhibit 'E'. The Plaintiff denied having tendered exhibit 'E' which was tendered in evidence in support of the Plaintiff's assertion that she decided to regularize all tenancies by issuing the tenants on her land written tenancy agreement. That the Defendant has however defaulted in the payment of the agreed rent since 2014 after he initially paid GH¢200.00. The Plaintiff told the Court that she did not exhibit anything like that after she had told the Court under cross examination that she had not said that she attempted regularizing the agreement between her and the Defendant in respect of the land. The denial of exhibit 'E' by the Plaintiff cannot be overlooked by this Court. The said exhibit 'E' was also not signed by the Defendant so it cannot be binding on him. From the evidence before the Court, there is no evidence to support how the Plaintiff arrived at the amount of GH¢950.00 being rent arrears from 1st September 2014 to 31st October 2017 which is being claimed by the Plaintiff against the Defendant. Flowing from the above I find that the Defendant does not owe the Plaintiff any rent arrears as there is no evidence before this Court to establish that.

6. *Whether or not there was an agreed monthly rent of GH¢25.00 by the parties herein.*

From the above, once exhibit 'E' was denied by the Plaintiff under cross examination the Court cannot give orders to enforce same. The said claim by the Plaintiff is hereby dismissed as without proof, particularly in the face of vehement denial by the Defendant.

7. *Whether or not the Plaintiff is entitled to the reliefs endorsed on the Amended Writ of Summons.*

From the above analysis and considering the entire evidence before this Court, I find that the Plaintiff is partly entitled to the reliefs endorsed on the Writ of Summons. This is because the Plaintiff on the balance of probabilities has been able to partly prove her claims against the Defendant. The Plaintiff will be entitled to the recovery of possession since Defendant could not prove that the land in dispute belongs to the Plaintiff's brother who granted same to him but Plaintiff has been able to prove on the balance of probabilities that the said land is part of the land that was allocated to her by the Tema Traditional Council. Accordingly, I hereby find that the Plaintiff is entitled to a grant of an order of perpetual injunction against the Defendant with respect to the land in dispute.

8. *Whether or not the Defendant is entitled to the reliefs contained in his counterclaim.*

A counterclaim is a separate and independent action with the burden of proof no different from the Plaintiff's legal burden. In the case of *Op. Kwasi Asamoah v. Kwadwo Appea (2003-04) SCGLR 226 at 246*, it was held that:

"The position with regards to proof of the Defendant's case was that since they made a counterclaim, they assumed the same onus of proof as lay on the Plaintiff."

Reference is also made to the case of *Nii Odoi Kwao Asumang & 2 Ors v. William Sowah Charwey & 14 Ors (2014) 75 GMJ 108 at 135*.

From the evidence before this Court and the foregoing analysis, the Defendant could not lead satisfactory evidence that he is entitled to the reliefs contained in his counterclaim.

Gbadegbe JSC in the case of *Sagoe v. SSNIT (2011) 30 GMJ 133; (2012) 52 GMJ 47* held:

"The party who asserts the affirmative of an issue has the incidence of the legal burden ..."

Having asserted in the affirmative that the land in dispute was granted to him by the Plaintiff's late brother, the Defendant had the incidence of the legal burden to prove the said assertion after same was vehemently denied by the Plaintiff however he failed to discharge that burden of proof. Consequently, the reliefs under the Defendants' counterclaim hereby fail.

The Court of Appeal applying the principle held in the case of *Fordjour v. Kaakyire [2015] 85 GMJ 61*. His Lordship Ayebi J.A. espoused:

"It has to be noted that the Court determines the merits of every case based on legally proven evidence and

On the basis of the entire evidence before this Court and the findings above, I hereby dismiss the reliefs contained in the counterclaim of the Defendant in the absence of sufficient evidence by the Defendant to be entitled to the said reliefs; and I find on the preponderance of probability that the Plaintiff was able to partly discharge the legal burden placed on her.

In the circumstances, I hereby enter judgment for the Plaintiff against the Defendant as follows:

1. A declaration that the land in dispute situate and being at Abonko, Tema Newtown, is part of the Plaintiff's land allocated to her by the Tema Traditional Council.
2. The Plaintiff is entitled to recover possession of the said land in dispute situate and being at Abonko, Tema Newtown.
3. Perpetual injunction restraining the Defendant, his agents and assigns, privies, workmen and all people claiming through him from entering and dealing in any manner with the Plaintiff's land, the subject matter of the suit.
4. I award a cost of GH¢1,500.00 against the Defendant in favour of the Plaintiff.

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H/H AKOSUA A. ADJEPONG
(MRS)
CIRCUIT COURT JUDGE
18TH NOVEMBER 2022

