

IN THE DISTRICT COURT HELD AT DZODZE ON FRIDAY THE 18TH OF NOVEMBER,2022 BEFORE HIS WORSHIP NELSON DELASI AWUKU, DISTRICT MAGISTRATE.

Suit No. A1/28/17

KWABLA VIDZAGLA ADUKPO

}

PLAINTIFF

VRS

1.YAOVI DARRAH

}

DEFENDANTS

2. KWAKU DARRAH

JUDGMENT

PARTIES

PLAINTIFF PRESENT

DEFENDANTS PRESENT

CASE OF PLAINTIFF:

By a writ of summons and statement of claim filed on 19th May,2017 and 30th October, 2017 the plaintiff claimed the following reliefs against the defendants;

a. *Declaration of title, ownership and recovery of possession of the piece of land situate, lying and being at Gbegbekorpe and bounded as follows;*

- *On one side by Dam Adzoasi Carnal*
- *On another side by property of Kwakuvi Adukpo*
- *On another side by property of Moses Nugonu and*
- *On the last side by property of Moses Kwasi Nugonu*

- b. Perpetual injunction restraining the defendant by himself, his agents, assigns, workmen and privies from entering the disputed land*
- c. Recovery of an amount of One thousand, six hundred cedis (GH¢ 1, 600,00) being cost of palm trees and cassava plants the defendants destroyed by fire on the disputed land.*
- d. General damages for trespass*

It is the case of the plaintiff that the land the subject matter of this suit originally belonged to and was founded by Torgbui Wesigbe of Weta-Adzoatsi.

The Plaintiff assert that Torgbui Wesigbe's descendants are Ayissah Wesigbe, Eklu Ayisah, Sese Ayisah, Agbodza Ahadzi and Letsu Agbodza.

The plaintiff further assert that all the descendants or the children and grandchildren of Torgbui Wesigbe worked on the said land currently in dispute without any disturbance or litigation.

The plaintiff assert that Letsu Agbodza gave birth to two male children namely Dogbe Adukpo and Darah Letsu and shared the landed property to them which they all worked on without any litigation whatsoever.

The plaintiff assert that Dogbe Adukpo begat Amuzu Gliku Adukpo who also worked on the said land with the father till the father passed on and he continued to work there.

The plaintiff assert that Amuzu Gliku Adukpo begat Kwabla Vidzagla Adukpo who is the plaintiff herein and further contends that during the lifetime of the defendants' parents and grandparents they never related to or associated the land to different people.

The plaintiff assert that the land shared to his grandfather Dogbe Adukpo which was inherited by his father Amuzu Gliku Adukpo is what he is currently working on all these years.

The plaintiff states that the attempts by the defendants to divert ownership of the land to Dorvlo should not be tolerated and prayed that the court declares ownership in his favour.

The plaintiff assert that all efforts to stop the defendants from his activities on the land yielded no positive results. Hence his action.

THE CASE OF DEFENDANTS

By a statement of defence filed on 7th November,2017, the defendants stated that the disputed land is part of a vast stretch of land founded by their great grandfather Torgbui Wesigbe who begat Ayisah Wesigbe who begat Eklu Ayisah who begat Sese Ayisah who begat Agbodza Ahadzi who begat Letsu Agbodza who also begat Dogbe Adukpo and Darah Letsu.

The defendants stated that Dogbe Adukpo begat Amuzu Adukpo who begat Kwabla Vidzagla Adukpo, the plaintiff.

The defendants stated that Dara Letsu begat Kwaku Darah the 2nd Defendant who begat Yaovi Darah the 1st defendant.

The defendants state that their father and the plaintiff's grandfather are from the same father Letsu Agbodza.

The defendants stated that the disputed land was given to one Dorvlo Misebua by Ahadzi Sese to cultivate even though Dorvlo Misebua was not a member of their family and after the death of Dorvlo Misebua, his brother Kato, took over where his late brother has been cultivating.

The defendants stated that the 2nd defendant's father resisted the takeover of the disputed land by Kato and subsequently took the matter to an arbitration to Amponi and some elders of Agbadome and who delivered judgment in favour of the 2nd defendant's father and that the disputed land reverted to the 2nd defendant's father.

The defendants stated that the 2nd defendant's father cultivated the disputed land and built a dwelling place on it.

The defendants stated that the 2nd defendant inherited the disputed land after the death of his father and thereafter gave part of the disputed land to the plaintiff's father to cultivate when he requested for a parcel of land to cultivate.

The defendants stated that the 2nd defendant has been on the disputed land for the past sixty-five (65) years and that when the Adzoatsi dam was constructed it passed through part of the disputed land.

The defendants state that the plaintiff has extended the boundary of the land which was given to his father by the 2nd defendant.

The defendants stated that the land given to the plaintiff's father shares boundary with the spill way of the dam and does not extend to the bank of the dam.

PROCEDURAL HISTORY

The original writ issued on 19th May,2017 was against the 1st defendant Yaovi Darah.

Following an application to join the suit, the 2nd defendant was joined as 2nd defendant pursuant to the order of court.

Considering the nature of the case and relationship between the parties as cousins, the case was referred for settlement by the court's connected alternative dispute resolution officers, but unfortunately settlement broke down.

The case commenced before His Worship Lawrence Buenor Buer, was taken over by His Worship Derrick Pardon Eshun and later by Her Worship Rejoyce Aseye Gadago.

The proceedings were adopted before me on 8th March, 2022 and hearing continued with the further cross examination of 2nd defendant by plaintiff.

ISSUES

From the pleadings filed by both parties, the following issues were set down;

1. Whether the land in dispute was allocated to Dogbe Adukpo father of the plaintiff?
2. Whether the land allocated to the plaintiff's father was bounded as described in his writ?
3. Whether the defendants destroyed crops on the land belonging to the plaintiff?

BURDEN OF PROOF

The plaintiff who asserts usually has the burden of proving same on a preponderance of probabilities. Preponderance of probabilities according to section 12(2) of the Evidence Act (NRCD 323) means;

“that degree of certainty of belief in the mind of the tribunal of fact or the court by which it is convinced that the existence of a fact is more probable than its non-existence”

Where the plaintiff has been able to lead sufficient evidence in support of his case, then it behoves upon the defendant to lead sufficient evidence in rebuttal or risk being ruled against on the issues.

Under section 11(4) of NRCD 323, a party discharges the burden of producing evidence when the party produces 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 **Mondial Veneer (Gh.) Ltd. v. Amuah Gyebu XV (2011) SCGLR 466**, the Supreme Court in dealing with the burden of proof in respect of declaration of title stated through Georgina Wood C.J as follows;

“In land litigation....the law requires the person asserting title and on whom the burden of persuasion falls to prove the root of title, mode of acquisition and various acts of possession, exercised over the subject matter of litigation. It is only where the party has succeeded in establishing these facts on a balance of probabilities that the party would be entitled to the claim”.

The Court is also mindful of one of the cardinal duties of a Court in evaluating evidence led during trial which is for the Court to assess all the evidence on record in order to determine in whose favour the balance of probabilities should lie. See the cases of **Adwubeng v. Domfeh [1996-97] SCGLR 660** and **Takoradi Flour Mills v. Samir Faris [2005-2006] SCGLR 882**.

SUMMARY OF EVIDENCE

The plaintiff testified by himself and called two other witnesses namely Korshie Ngonu (PW1), and Korkuvi Adukpo (PW2).

The plaintiffs also tendered into evidence two photographs as images of the destruction caused to his farm which were adopted and marked as Exhibits A and A1.

The defendants on the other hand testified through the 2nd Defendant and two other witnesses, Mensah Akorli (DW1) and Cephas Kpeli (DW2).

ANALYSIS

Issues 1 and 2: Whether the land in dispute was allotted to Dogbe Adukpo father of the plaintiff and whether the land allocated to the plaintiff's father was bounded as described in his writ?

It is the case of the plaintiff that he inherited this land from his father Amuzu Gliku Adukpo who also inherited from his father Dogbe Adukpo.

In paragraph 6 of his statement of claim, the plaintiff states that, the properties of Letsu Agbodza were shared between his two sons Dogbe Adukpo and Darah Letsu who have both worked on their respective portions without hindrance.

In paragraph 4 of their statement of defence, the defendants admitted to the plaintiff's claim that their father Darah and the plaintiff's father Dogbe Adukpo were both begat by Letsu Agbodza but denied the claim that both children had been working on the land.

The defendants although denied that the children of Letsu and Agbodza worked on the land, did not deny the claim that the land was shared for the two children of Letsu Agbodza.

Under **Order 18 rule 8(2) of the District Court Rules, 2009 (C.I 59)**, every allegation of fact in a written statement of claim which is not specifically denied, denied by necessary implication or stated not to be admitted in the statement of defence shall at the hearing be taken as admitted.

In this circumstance, the court refers to the case of **Kusi & Kusi v. Bonsu [2010] SCGLR 60**, where it was held by the Supreme Court that; *“where no issue was joined as between parties on a specific question, issue or fact, no duty was cast on the party asserting it to lead evidence in proof of that fact or issue”*.

The plaintiff called as his witnesses PW1 and Pw2 who identified themselves as neighbours to the disputed land. They both disputed the claim by the defendants that this land formed part of the arbitration award the defendants alluded to.

PW1 and PW2 stated that they also inherited their lands which share boundary with the disputed land from their fathers and that they have known the plaintiff's father as the one who had been farming on the land for so many years prior to his demise when the plaintiff took over without any challenge until the defendants' action after the demise of the father.

The plaintiff state that the land he inherited from his father shared boundary with the canal but the defendants disputed that and stated that the land was actually given to the plaintiff's father by the 2nd defendant

The defendants assert that the land was given to one Dorvlo Misebua by Ahadzi Sese to farm on and he passed on same to his brother Kato after his demise but the 2nd defendants father secured back the land through an arbitration award.

The defendants did not put any evidence before the court or call any witness to proof the fact of the arbitration and the exact land over which the arbitration was conducted.

The defendants stated in paragraph 7 of their defence that the land in dispute was given out by Sese Aisah who was the grandfather of their own grandfather Letsu Agbodza until it was reclaimed by Dara Letsu father of the 2nd defendant.

If it is the case of the defendants that the land was not shared, then Dara Letsu their father could not have pursued the arbitration in his personal capacity. Whatever land was retrieved from the arbitration would have been a family land which he could not on his own had treated as he wished.

Both the 2nd defendant and the father of the plaintiff are grandchildren of Letsu Agbodza. It is not clarified how the 2nd defendant became the one to allocate lands to his direct cousin. Does that presuppose that the plaintiff's grandfather Dogbe Adukpo did not have any allocation prior to his death?

In **Abakam Effiana Family v. Mbibado Effiana Family [1959] GLR 326**, the principle was established that, where it appeared that the evidence as to title was mainly traditional in character on each side and there was little to choose between the rival conflicting stories the person on whom the onus of proof rested must fail in the relief being sought for.

The plaintiff called witnesses in PW1 and PW2, members of the family and neighbours of the land who gave evidence to the effect that the plaintiff's father farmed on the land and handed over same to the plaintiff.

Whether the plaintiffs land extends to the boundary being claimed?

The position of the law is that for a person to succeed in his action for declaration of title, recovery of possession and an injunction, he must establish by positive evidence the identity of the land, **See Agyei Osae & Others v. Adjeifio & Others [2007-2008] SCGLR 499.**

Knowing the boundary owners would be sufficient but where the identity of the land is not in dispute, the action shall not fail because the boundary owners were not called to testify. **Jass Company Limited v. Appau and Another [2009] SCGLR 265.**

Since the plaintiff is seeking a declaration of title to land and other reliefs, he will succeed only if he is able to establish the identity of the land in question satisfactorily according to law so as to entitle him to the reliefs.

Even though the court stipulates that the requirement to establish the identity of land does not mean mathematical precision or exactness, the stipulation calls for the provision of a proof which demands material witnesses. This is because of the principle in the law of evidence that a party who bears the burden of proof is to produce the required evidence of the facts in issue that have the quality of credibility short of which his claim may fail.

In his book, **"Land law, practice and conveyancing in Ghana, 2nd Edition at page 123,** the learned author Justice Dennis Dominic Adjei stated as follows;

“In practice, where a party finds it difficult to prove his boundary he may call a boundary owner to describe either his boundary marks or features with the party whose identity of the land is in dispute and that would assist the party to vividly describe the limits of his land. It becomes more complex where a side of the boundary may have four or five boundary owners and the defendant disputes that the plaintiff does not share boundary with any of them. In such a situation, the plaintiff in order to prove the limits of his land must call all the boundary owners whose evidence would assist him to positively establish the identity of his land. Where the defendant is not disputing the boundary owners of the plaintiff but his claim is about the limits of the land, it would not be necessary for the plaintiff to call all the boundary owners except the one whose evidence is material in relation to the limit of the disputed land”.

Having enumerated his boundaries to include the boundary owners the plaintiff was bound to fail in an action for declaration of title if he declined to call such owner/s who are material witnesses to testify because the onus was on him to prove his boundaries on the preponderance of probabilities as held in the case of **Owusu v Tabiri (1987-1988) 1 GLR 287**.

The plaintiffs called as his witnesses PW1 and PW2 who testified as boundary owners of the land in dispute and further gave evidence in support of the claim that it is the plaintiff and his father who had always farmed on the disputed land.

The defendants denied that the plaintiff has been farming on the land and claimed ownership over the land by virtue of an arbitration award given in favour of their father. Copies of the award was not in evidence and no witness was called to speak to it.

The witness for the defendants DW1 admitted in paragraph 8 of his witness statement that the plaintiff’s land shares boundary with the disputed land but did not extend as far to the area where he is laying claim.

The evidence of DW2 was to the effect that he was once looking for a place to set a fishing trap and the plaintiff's father who he initially approached directed him to see the 2nd defendant because he was the owner of that area.

From the pleadings of the parties and admissions by DW1 the land in dispute is situated at a common area where both parties had distinct lands. The chances are that the area DW2 sought to place his fishing trap did not fall within the area owned by the plaintiff's father hence the direction for him to go and see the 2nd defendant.

The principles to follow in establishing proof in a matter involving the extent of boundaries between neighbours is set out in the case of **Owusu v Tabiri (supra) cited in Nortey (No.2) v. African Institute of Journalism and Communications and Others [2013] 1 SCGLR 703.**

DW1 agreed to the principle in relation to evidence of the boundary owners when he was under cross examination by the plaintiff on 17th June,2022;

Q. Those boundary owners that you mention, have you been seeing them on their respective lands?

A. Yes

Q. I am putting it to you that they were here in this court and testified that the land does not belong to the defendant but to my father Amuzu?

A. What they said is not true

Q. Those who share boundary with the disputed land and you who only cultivated the land for some time who is to be considered to be speaking the truth?

A. Those who share boundary with the land

DW2 also agreed with the principle of law under cross examination on 13th September,2022;

Q. You only came to fish. Between you and the boundary owner who will be in the best position to know the boundary of the land?

A. Those who share boundary with the land

Q. Should their evidence not be weightier than yours?

A. Their assertion can also be partly accepted and mine too can be accepted

Q. Do you have a land between our lands yourself?

A. No

Q. So I am putting it to you that the evidence of the boundary owners should be more weightier?

A. That is correct

Issue 3: Whether the defendants destroyed crops on the land belonging to the plaintiff?

In the summary of the subject matter of plaintiff's claim attached to his writ, the plaintiff claimed that the 1st defendant on the 20th March, 2017 trespassed into the disputed land and set fire to his crops laying adverse claim to the land.

The plaintiff did not repeat this in his pleadings but the matter though not pleaded was established through the evidence without objection from the defendants.

In **Nii Tackie Amoah VI v. Nii Armah Okaine & Others; Civil Appeal Suit No. J4/59/2013, 15th January, 2014**, it was held that, *"where an issue of claim or defence, though not pleaded is established by the evidence on record, which has not been objected to, the court would give effect to the legal consequences following from the pleaded facts and not to be held by the formulation of the pleadings"*.

The plaintiff subsequently filed Exhibits A and A1 as evidence of the destruction caused to his crops by the 1st defendant.

In his evidence-in-chief to this court on 16th January, 2018 the plaintiff stated that on 20th March, 2017 the 1st defendant came to set his farm ablaze. The plaintiff stated that, he reported the 1st defendant to the police but he absconded to Accra.

The plaintiff stated further that when the 1st defendant returned after a few months he informed the police but the police failed to prosecute the matter.

In his cross examination of the plaintiff on 21st February, 2018 the 1st defendant admitted to the incident but stated that the act was not intentional.

Q. When the farm was set ablaze did you go to NADMO to lodge a complaint?

A. No

Q. Why didn't you go?

A. If it was accidental fire I would have gone there long ago. But in this instance, you were the one who caused it and I saw you in the act so there was no need to go to NADMO to make a report.

Q. If the court go to the site now are we going to see 25 palm trees on the land there?

A. If the court goes to the land he would see some

Q. Was I not burning my own farm before the fire spread into yours?

A. I am saying that you burnt your farm and my crops

Q. I put it to you that me burning your farm was not intentional?

A. It was intentional

In **Attraah v. Aboah [1963] 2 GLR 340** it was held that, "a farmer owes a duty of care to his adjoining farmers not to cause damage to their property. Therefore, a farmer who before setting fire to his farm takes a precaution which he knows or ought to have known would be ineffective in preventing the spread of the fire, must at his peril contain the fire within the confines of his land or take the consequence of its spread".

In effect, the 1st defendant committed a breach of his duty to the plaintiff and is therefore liable to him for the damage which he sustained.

The plaintiff prayed for an order of recovery of an amount of One thousand, six hundred cedis (GHS 1,600.00) as cost of palm trees and cassava destroyed by fire caused by the 1st defendant on the disputed land but failed to produce evidence as the basis for his estimate.

In **Mahama v. Issah and Another [2001-2002] 1 GLR 694 (CA)**, it was held that in an action for trespass to land, a plaintiff would get only nominal damages if he fails to prove special damages.

The basic principle as set out in the case of *Borkloe and Another v. Nogbedzi and Another [1982-83] GLR 1003* for the measure of damages in cases of loss of chattels was restitution integrum, i.e the owner should recover such a sum as would replace him so far as could be done by compensation in money, in the same position as if the loss had not been inflicted on him, subject to the rules of law as to remoteness of damages.

CONCLUSION

On the balance of probabilities, the plaintiff has been able to proof possession and the boundaries of the land inherited from his father through the witnesses called.

Judgment is granted in his favour in respect of declaration of title and perpetual injunction against the defendants, their agents, assigns and all people claiming through them.

General damages of One thousand cedis (GHS 1,000.00) is awarded to the plaintiff for the loss suffered in respect of the damages.

Cost of One thousand cedis (GHS 1,000.00) is settled in favour of the plaintiff.

NELSON DELASI AWUKU
MAGISTRATE