

IN THE AGONA NKWANTA DISTRICT COURT HELD ON 19TH
NOVEMBER,2021 BEFORE HER HONOUR HATHIA AMA MANU (MRS)
SITTING AS ADDITIONAL MAGISTRATE.

IN THE DISTRICT COURT HELD IN THE WESTERN REGION ON WEDNESDAY AT
AGONA NKWANTA ON THE 21ST DECEMBER 2022 BEFORE HIS WORSHIP SIDNEY
BRAIMAH DISTRICT MAGISTRATE

R/AA/DC/A11/17/2020

OPANYIN ENYAMI

VRS

NANA GYEDE ASUA III

JUDGMENT

The defendant in this case commenced this action but had his claims struck out by the court differently constituted and same left room for the Plaintiff who was formerly a defendant's counterclaim to be determined by this court. The Plaintiff in this case claims:

- (a) A declaration that Mpanyinasa lands belong to the stool of Himakrom and that the Safohene Ebiratuo family of Mpanyinasa are the caretakers of the Mpanyinasa lands.
- (b) A declaration that defendant and all who claim through the defendant have no right to sell,alienate or dispose of any of the Mpanyinasa lands.
- (c) An order directed at the defendant to account for all monies he had received from Mpanyinasa land refund same to the plaintiff.
- (d) Perpetual injunction restricting the defendant his agents, assigns and all who claim through him from selling, alienating or disposing of any of the Mpanyinasa land.

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The defendant filled a response to the counter claim which gave a historic background of how his ancestors occupied the stool and how he came about succeeding the former chief. Although the historic revelation was appreciated, the court has not lost focus of the fact that the main issue for deliberation in this case is not whether the defendant is a chief or not but the issues to be determined by the court are:

-Whether or not the traditional evidence adduced by the Plaintiff supports the claims made.

-Whether or not the Plaintiff is entitled to the reliefs sought.

The level of proof in civil case as stated in **Section 12** of the **Evidence decree, 1975 (N.R.C.D323)** provides that:

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

See the case of **Serwah V Kesse [1960] GLR 227 at 228** where the court establishes the principle that:

“the onus of proof on a party in a civil case is however less than that on the prosecution in a criminal case.”

This principle was further reinstated by the Supreme Court in the case of **DON ACKAH v. PERGAH TRANSPORT [2011] 31 GMJ 174 SC**, held that *“it is a basic principle of 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 has the quality of credibility short of which his claim*

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may fail. It is trite law that matters that are capable of proof must be proved by providing sufficient evidence so that on all the evidence a reasonable mind could conclude that the existence of the fact is more probable than its non-existence."

All this been said, the defendant turned Plaintiff in this case has sought to adduce traditional evidence to support his claims and as such the standard for accessing traditional evidence as provided in the case of **In re Kodie stool :Adowaa V Osei [1998-99] SCGLRR 23** will be applied. In that case the court stated that, "where the traditional evidence was conflicting and evidence of occupation and ownership were equally conflicting, the court had to decide the case by shifting and weighting the respective testimonies to see which outweighs the few clearly established facts."

The plaintiff called a witness who identified himself as a member of the Obohu Ebiratuo family of Mpanyinasa. This witness gave evidence to the effect that Mpanyinasa lands form part of Himakrom lands and that when their ancestors came to the central region over 200 years ago they broke the virgin land for farming and hunting. The witness claims that it is a known history that Mpanyinasa lands are used to serve Himakrom lands and that a debt accrued due to the failure of Nana Gyede Asua 11 and another's failure to pay money given to them. That this lead to the creditors auctioning Himakrom lands to defray the cost but fortunately Safohene Obohu rescued them by paying the debt owed. The witness further claimed that as a sign of gratitude his ancestor and family members were made caretakers of Mpanyinasa lands. The witness identified the boundary of Mpanyinasa land to include Ngolozua, Nyankekrom, Damtse, Anomabo and Anyinase. This witness was extensively questioned by the defendant's counsel but from the line of questioning it was clear the focus

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was on getting the witness to admit Mpanyinansa had a chief being the defendant and that he was in charge of the lands.

The Plaintiff also called a witness who identified himself as chief of Damtse one of the lands that share boundary with Mpanyinasa. The witness a chief gave evidence that the history passes over from his ancestors his lands and Mpanyinasa are Odikro to Himakrom lands and that they both share boundary at a place called Oholobula. The crust of his evidence is that after Nana Gyedu Asua 11 and Kwame Kojo Kakraba failed to pay the creditor the Himakrom stool called a meeting of all the Odikros and told them that Safohene Obohu Ebiratuo family are now the care takers of Mpanyinasa land due him saving the lands of Himakrom. Defendant's counsel interrogated this witness expensively but I found his evidence to be unwilted as the main focus of the the cross examination was to get the witness to admit the defendant is a chief and also question his knowledge of the boundary he claims to share with Mpanyinana. The actual evidence of the traditional history down by his ancestors which he the said witness claims to still comply was untinted with doubt by cross examination. The Plaintiff's most crucial witness was the one who stated that he is the caretaker and secretary to the royal Ebiratuo Ebiradze family of Himakrom. Thus in the eyes of the court this individual can best be described as one of those with vast knowledge handed down from generations past. He reinstated the historical briefing given by Plaintiff's other witnesses but clarified that Mpanyinasa land was formerly used for farming but when occupied one-third of dividends accrued from the land was given to Himakrom land. This witness further stated that defendant is not known to the stool of Himakrom and even if he was he still could not alienate land without the consent of himakrom.

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The witness stated that defendant has been cautioned about laying claims to Mpanyinasa lands. During cross-examination this witness admitted that he did not know the defendant has a chief amidst claims that his information is one which his ancestors passed down to him. By a motion filled on 8th October 2021 the witness was recalled to tender into evidence documents which he had just discovered amidst objection by defence counsel that this suit is about ownership of land and who has control over a certain piece of land. The documents were admitted and marked as Exhibit PW1.

Before I access PW1 and the evidence of the Plaintiff's witness I will like to re-instate that this case never just about declaration of title neither is it about who is a chief or not. This action is to determine which of the parties evidence will support their claim of whether Myanyinasa stool atones tenancy to Himakrom or not and this trial bothers on which traditional evidence is probable.

PW1 embodied a copy of certificate of authenticity from the Public records and Achieves Administration Department Sekondi-Takoradi. The documents attached are extracts on stool land papers from Ebiratuo Ebiradze family of Himakrom and documents on the sale of Himakrom lands. Accessing the documents I find that same has an official stamp and was duly certified by the principal of record officer, even the letter attached is duly stamped by the national achieves of Ghana.

Section 151 of the Evidence Act, 1975 provides that books, pamphlets, gazettes or other publications purporting to be printed or published by a public entity are presumed to be authentic. These documents depict that indeed a loan was owed for which Himakrom lands were to be sold and that a process to auction the lands commenced. The Plaintiffs also exhibited an indenture of lease which has been duly registered. The

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said lease was duly signed by the Regional Surveyor on 10th March 2016 and same has stamp duty paid per the embossment at the back of the site plan. This lease was executed between Ebusuapanyin Abrokwa of the Ebratuo royal family and the lessee. This document although questioned by the defendants counsel has all the requisite stamps and is duly executed and the court considers same as proof that the Plaintiff's family has indeed been selling land in Mpanyinasa. From the stamps I can deduce that the indenture was received by the land valuation division on 13th January 2020 and the stamp duty paid on 6th January 2021.

On the part of the defendant legally he is not obliged to adduce any evidence as it is the plaintiff making assertions against him however the burden of persuasion shifts after the Plaintiff's claim hence the defendant in this case who has a different version is expected to adduce cogent evidence which court cause the scale of justice to tilt in his favour and cause the court to give a ruling in his favor.

It is the case of the defendant that his ancestor was the chief of Himakrom and Mpanyinasa which he discovered and chose as his last destination will on voyage to pay homage to his relatives. The defendant also stated that other people eventually joined their Ebiratuo Ebiradze family and that from his matrilineal line he eventually ascended the stool with the stool name Nana Gyedu Esson 111. The defendant also filed a supplementary witness statement and gave evidence that the stool of Mpanyinasa has never been an odikro under Himakrom. The defendant further asserted that the stool of Mpanyinasa was elevated to Dividional chief by the Omanhene of Ahanta Traditional Area and same was proved by attached exhibits. Other exhibits which were attached to the evidence of the stool secretary included a letter written by the late Nana Nzafram 111 in opposition to the chief of Mpanyinasa collecting tolls, which said letter was

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received by the District Administrative Officer on 30th October, 1968. The letter was written to Nana Baidoo Bonso XV with the following people copied thus the secretary of the Ahanta Traditional council, District Administrative Officer as well as the secretary. A gazette publication with a certificate of authentication signed and given under the seal of Joseph Justice Turton Mensah on the 28th June 1999 was exhibited with an attachment from the gold coast chief's list of 1939 @133. From the extract one could clearly read that Mpanyinasa has the title of an Odikro.

The defendant was extensively cross-examined but the defendant insisted that the history of his ancestors was written by the Dutch and his family has always had allodial title to the lands in Mpanyinasa. The defendant also denied having sold 150 to 200 plots of land in Mpanyinasa or winning sand within the land. The defendant also stated the towns that serve as boundary for his land and insisted that the Dutch documented same. The court asked the defendant to differentiate between an Odikro and divisional chief as he claimed an Odikro does not atone to anyone. The defendant explained that an Odikro has his own land and that a group of Odikro come together and elect a leader to Otumfuo as a divisional chief. The court asked and the defendant listed the Odikro under him. In accessing the defendant's exhibits I observed that the elevation of the Mpanyinasa stool was done on 1st March 2008 and the letter issued on 4th March 2008 to that effect. The defendant also tendered the gazette publication which showed that the title of his predecessor and his in office are the same.

Having been presented with this fact and evidence I asked myself if the defendant's predecessor was never an Odikro then why did Otumfuo give the defendant a letter of elevation. The term elevation given its original meaning can best be interpreted as been put in an enhanced position. Again the defendant was asked the process of becoming a

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divisional chief and after explaining he claimed that his forefathers went through the process for him thus implying his for fathers were divisional chiefs. The content of the letter signed by Otumfuo Baidoo Bonsoe XV clearly states that; “by dint of hard work and unqualified services by his predecessors and elders of his stool to the paramountcy” again this affirms that the defendant’s current status is recently acquired and not one which was already in place.

Having considered the traditional evidence presented by both parties and also carefully accessing the exhibits filed in this case I have considered the exhibits to ascertain proof of ownership because the provision of section 48 of the Evidence Act when construed can allow one win declaration of title even if the traditional evidence says otherwise. However the court cannot put something on nothing.

In the case of **In Re Taagyen and Assago Stools; Kumanin 11 (Substituted by Oppon V Anin [1998-1999] SCGLR 399**, the court established that evidence of recent events on matters within living memory testified to by the witnesses for the appellant on the Asaago stool clearly show that more weight ought to be given to this than to the traditional evidence which in this case as in all other traditional evidence is full of inconsistencies, contradictions and weakness.

Thus it is prudent that this court in resolving the issues access if there are other recent event apart from the historic information given by both side. It is my finding that apart from the history given by the plaintiff, he also brought witnesses who gave cogent evidence supported by exhibits that affirm their claims. The exhibits tendered into evidence were official documents all with the appropriate seals and duly executed and the court had no reason to doubt same to this end I find that the Plaintiff adduced relevant traditional evidence supported by official documents to prove his claim. The

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indenture exhibited by the plaintiff which was duly registered during the period of defendant's enstoolment serves as an act in recent time by the plaintiff to support their claims. The defendant was unable to tilt the scale in his favour as his exhibits tendered in court proved that he has obtained a new title but as to whether the title has changed his entitlement to sell land is another issue. There is a system already in place and as his title was changed nothing stopped the Otumfuo from rectifying any anomaly with his right to alienate land in mpanyinansa especially since his own evidence contradicts his claim of his ancestors always being divisional chiefs.

In hereby find that Mpayinansa lands per the evidence presented atones to Himakrom until such time that the requisite decision is given by the appropriate body vest with jurisdiction (National/Regional House of Chiefs). The Plaintiff was unable to prove the defendant had sold any land and hence I am unable to direct him to account for same. To this end I find that no sale of land should be effected without the approval of the Safohene Ebiratuo family and that Himakrom is entitled to one third of any such sale. The court accordingly awards cost of Ghc5000.00 for the plaintiff taking into consideration inter alia; the length of trial, the processes filed and the number of adjournments. Interest thereof shall take effect from today until the entire amount is fully paid.

HW Sidney Braimah

Magistrate

Edmund Acquah Arhin with Emma Amponsah for Defendant

Daniel Amosah for Plaintiff

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