

IN THE DISTRICT COURT, KADJEBI IN THE OTI REGION OF THE REPUBLIC OF GHANA HELD ON FRIDAY THE 24TH DAY OF JUNE, 2022, BEFORE HIS WORSHIP ERIC K. FIAMORDZI ESQ., (MAGISTRATE)

SUIT NO A1/38/2020

1. NANA KRAMPA DANSO
2. CHRISTIANA SEKYERE

BOTH OF PAMPAWIE

PLAINTIFFS

V

1. EFO ETSE
2. KAKOTSE YAA
3. REV. CARL KAKOTSE

ALSO OF PAMPAWIE AMANTA

DEFENDANTS

Plaintiffs present

Defendants present

JUDGMENT

This judgment is the outcome of a writ of summons issued by the Plaintiffs in fulfilment of Order 2 rule 3 (6) of the C I 59, The District Court rules, 2009, against the Defendants for the following reliefs.

1. Declaration of title and possession of all that piece or parcel of farmland lying or situate at a place popularly known and called Old Police station along Ampeyo road and bounded by the following: -

On one side by a stool land,

On another side by first Plaintiff's farmland

On another side by Opanyin Kwaku Nketia

On the last side by the first Plaintiff's farmland

which said land the Defendants are claiming unlawful ownership.

2. Perpetual Injunction restraining the Defendants, their agents or privies or their close relatives e.t.c from entering onto the said farmland until the final determination of this case and
3. Cost.

SUMMARY OF SUBJECT MATTER OF CLAIM.

The first Plaintiff (P1) is a nephew to the second Plaintiff. The farmland in dispute was originally acquired by the first Plaintiff's father by name Opanyin Mawuena, now deceased. The Plaintiffs added that during the lifetime of the first Plaintiff's father, he shared his farmland among his children including the first Plaintiff's aunt and the second Plaintiff's father.

The children, they continued, took possession of the land and cultivated crops on their respective portions without any encumbrances from any quarters.

When the second Plaintiff's father passed on, he was succeeded by the first Plaintiff, who then shared the land of the second Plaintiff's father among his children including the second Plaintiff; when the second Plaintiff's father died in the year, 2011, the land lied fallow until the year 2017, when the first Plaintiff shared same among the children.

The second Plaintiff's portion of her father's land shares boundary with the stool land of which the Defendants are caretakers. But the Defendants trespassed onto the second Plaintiff's portion of the land, thereby claiming ownership. The Plaintiffs further say, the second defendant is a wife to the first defendant.

According to the Plaintiffs, all attempts to prevent the defendants from working on the said land has proved fruitless, hence this action before the court.

Wherefore Plaintiffs claim from the defendants per their endorsed writ of summons.

HEARING

The parties appeared before the court on the 07th day of September, 2019, and the plea of the Defendants were taken. They all pleaded not liable to the reliefs of the Plaintiffs.

The court then ordered the parties to file their witness's statements and any relevant documents/exhibits in their possession in relation to the subject matter in issue. The matter was consequently adjourned.

On the next adjourned date, the 3rd Defendant (one Rev. Carl Kakotse) applied by a motion on notice with an accompanying affidavit to join to protect his interest in the subject matter before the court. The Plaintiffs did not object to the application of the applicant. So, after the motion was moved, and the Plaintiffs responded to same, the applicant was joined as the third Defendant

When the witness statements were filed, an order was made that they were swapped between the parties herein.

The second Plaintiff elected to give the evidence in chief for herself and on behalf of the first Plaintiff. She relied on her witness statement

Under cross examination by first Defendant, the second Plaintiff denied that it took them three (3) to four (4) years before the matter was taken to the arbitration of a local chief for settlement. She stated that it took them only two years to do so, after the Defendants trespassed onto their farmland.

She also denied that someone else has taken legal action against the second defendant, on the same subject matter. She explained that their land shares a common boundary

with the land that had been litigated with the second defendant by one Papa Kwaku Nketia of Ampeyo.

Under cross examination by the second defendant, she concluded by denying that, the defendants have been cultivating the now disputed land for four (4) years.

Under cross examination by the third Defendant, the second Plaintiff maintained that both the first defendant and second defendants were present throughout the arbitration and the locus inspection of the land by the chiefs and elders of Pampawie, and that they (first and second Defendants) were even made to show their portion of the land before the chiefs and elders of Pampawie published an award later.

After the cross examination of the second Plaintiff, the third defendant applied viva voce for leave of the court to cross examine the first Plaintiff. The Plaintiffs did not object to the application of the third defendant. Consequently, the opportunity was created for the third defendant to cross examine the first Plaintiff on oath in the witness box.

Under cross examination by the third defendant first Plaintiff, admitted that his farmland shares a common boundary with the now disputed portion of the land. He explained that, that whole area was his biological father's portion of the farmland which was shared between him (first Plaintiff) and his elder brother, the late Sekyere (ie the father of the second Plaintiff).

Under cross examination by the second defendant, the second Plaintiff told the court that, although the second defendant lost the court case against Papa Kwaku Nketia of Ampeyo, she (second defendant) continued to cultivate that subject matter in contempt of the court order and that land is different from the subject matter in dispute

The first Plaintiff admitted that he is well aware that the Defendants' family has ever had land litigation with one Preku after which Preku was found liable. He added that the

portion of land that Preku was cultivating before that arbitration award, does not extend to the now disputed portion.

He (first Plaintiff) admitted that, the defendants have a cottage which is close to their boundary but, the disputed portion of the land does not form part of defendants' land.

He again admitted that he was a witness for the defendant herein in the land matter between them (defendants herein) and one Kwaku Nketia, which the Defendants even lost. He concluded that, that portion is different from the now disputed portion of the land which, according to him, is (" Sekyere 's land".)

The Plaintiffs relied on four witnesses to make their case.

The PW1 admitted that, the portion the first defendant was cultivating, and which is in issue belongs to the Pampawie stool, and that the first defendant informed him that it was the third defendant and DW1 who had permitted the first Defendant to cultivate same.

He (PW1) again admitted that the cocoa trees cultivated on the now disputed portion of the land by the first defendant for the second and third defendants are matured. He added by admitting that, when they constituted a panel and visited the land in dispute, they saw even more matured cocoa trees which could be over eight to ten (10) years, on the land. So, one Okyeame Koranteng requested that the defendants herein released the now litigated farm to the stool in compensation for an amount of one thousand Ghana Cedis (GHC1,000.00) . He intimated that the amount of one thousand Ghana Cedis (GHC1,000.00)) was even given out in cash by Okyeame Korateng to the first defendant in person but he rejected same.

Under cross examination by the second defendant, the PW1 admitted that he knows the portion of land cultivated with cocoa trees by the father of second defendant, the late Foli Kakotse.

He concluded that the portion of land litigated for which Mankrado Yaw Ntem and first Plaintiff came in as their witnesses belongs to the people of Ampeyo. So, they are in court currently over the land at Pampawie.

Under cross examination by the third defendant, the PW1 said, the land allocated by the stool to the first defendant and second Defendant to cultivate have no matured cocoa trees. But the one allocated to the Plaintiffs herein have more matured cocoa trees.

The PW1 admitted that, he is aware of the fact that one Nana Abasa, a chief of Pampawie and third defendant's brother called Aaron Kakotse (DW1) have jointly litigated over the subject matter in issue with one Preku Amoah in the District court, Kadjebi (i.e. the court herein). He added that the subject matter therein was in respect of a stool land which the chiefs and elders of Pampawie were giving out to only the strangers. He added that they (the chiefs and elders) took the land from Preku Amoah, who was an indigene and gave same to Aaron Kakotse, the brother of the third defendant. He explained that the strangers like Aaron Kakotse (DW1) were going to pay tolls /taxes to the stool, but the indigenes would not pay such tolls to the stool.

The PW1 concluded by denying that the land the subject matter of the previous litigation involving Aaron Kakotse and Nana Abasa is the same subject matter herein.

Under cross examination by the first defendant, the PW2 said, he was not present when the first defendant told the chiefs and elders that the land he is currently cultivating was granted to him by Aaron Kakotse (DW1). He added that, he is not even aware that the Plaintiffs herein have told him or warned him not to step his feet on the now disputed portion of the land.

He admitted that, he was not present when the first defendant went and pleaded with the Plaintiffs to allow him to continue with taking food crops from the litigated farm, and with the cultivation and maintenance of the farmland currently in issue. The PW2

admitted that, he did not join that panel that visited the land for inspection from the chief's palace.

The PW2 concluded by admitting that the first defendant had cultivated cocoa trees on the now disputed portion of the land.

Under cross examination by the second defendant, the PW3 told the court that the first Plaintiff testified for the second defendant during her litigation with Nana Kwaku Nketia to prove that that portion of land in dispute belongs to the people of Pampawie and not to the people of Ampeyo.

He admitted that, the chiefs and elders of Pampawie used the DW1 herein as a party in the matter against Preko Amoah. He added that the Pampawie stool asked Preko Amoah, who has cocoa trees on the land not to cultivate that portion any more.

Under cross examination by the third defendant, the PW3 denied that a stream and the bamboo grove are some boundary features of the now disputed land.

According to the PW3, the bamboo grove is on the stool land, and not on the boundary.

The PW3 told the court that he had consulted his biological father (who actually filed the witness statement), who told him that the stream is beyond the bamboo grove, and is not on the stool land but on the land of the second Plaintiff's father.

The PW4 happens to be Opanyin Kwaku Nketia who took action against the second Defendant, and the first Plaintiff teamed up with the second defendant as a witness in an earlier matter. The PW4 herein was declared the winner in that previous court case.

He relied on his witness statement filed. Under cross examination by the first defendant, the PW4 admitted that the first defendant has been cultivating the now disputed land before he (PW4) took legal action against the second defendant in another suit/matter. The PW4 added that the first defendant had cultivated/planted young cocoa trees which

were about three (3 years on the now disputed land before he (PW4) took that action against the second Defendant (who) happen to be the wife of the first defendant. He (PW4) again admitted that the first Plaintiff was also present with the team before they inspected that portion of the land in contention between the second defendant and the PW4(who was the Plaintiff therein. He (PW4) explained that the first defendant herein cultivated the bottom/down portion of the land, whilst the second Plaintiff cultivated the top/upper portion of the same land.

The PW4 concluded that it is not true that the Plaintiffs are in court to take the cocoa farm cultivated by the first defendant from the defendants herein. So, what he knows is what he has told the court.

Under cross examination by the second defendant, the PW4 admitted that his portion of the land shares a common boundary with both the first Plaintiff and the second defendant and not the second Plaintiff. He explained that he did not take any action against the first Plaintiff by then because, he (first Plaintiff) did not trespass onto his (PW4)'s land.

The PW4 concluded that, if the Plaintiffs are in court over the same subject matter for which he sued the second defendant earlier for trespass, then the Plaintiffs cannot succeed in their action.

Under cross examination by the third defendant, the PW4 told the court that the first Plaintiff's father had cultivated the bamboo grove area before. He added that the Plaintiffs are on the boundary of the now disputed portion of the land. He admitted that there is a boundary between the Plaintiffs' land and that of the defendants herein.

The PW4 concluded by denying that he is not aware that the first Plaintiff's elder brother (the late Opannin Sekyere has cultivated cola nut trees on the boundary to separate the two lands.

After the close of the case of the Plaintiffs, the defendants were called upon to open their defence and they did.

The first defendant in his defence, relied on his witness statement on oaths.

Under cross examination by the first Plaintiff, he (first defendant) denied that he has gone to cultivate the land of Sekyere at Korkorbia. He also denied that the first Plaintiff came alone to warn him not to cultivate the now disputed portion of the land. He explained that, it was after he had cultivated the land with cocoa that the first Plaintiff and some elders of the town came over to the farm and the first Plaintiff demarcated a path through to indicate his boundary. But, he (first Plaintiff) did not stop him from continuing to maintain or cultivate the now disputed portion of the farm.

The first defendant denied that he has been making incursion on to the Plaintiffs' land. He added that he had cultivated cocoa trees which were about five (5) years on the disputed portion of the land before the first Plaintiff went and reported the matter to the chiefs and elders of Pampawie that he has trespassed onto his (Plaintiff's) land.

He (first defendant) admitted that, there were some matured cocoa trees dotted/scattered on the land but, those trees were cultivated by one Preku and Foli Kakotse (ie from the defendants' family side)

The first defendant concluded by maintaining that although he presented some drinks through the PW2 and PW3 to the first Plaintiff, they (the drinks) were meant to permit him (first defendant) to go to the farm and pick/harvest food crops and not to seek his (first Plaintiff's) consent to cultivate the farmland, because, the cocoa farm had already been cultivated by him (first Defendant) by then.

Under cross examination by the second Plaintiff, the first defendant admitted that the chiefs and elders of Pampawie had imposed a fine on him on one occasion. He explained

that the fine was in respect of an allegation made by the farm labourer of the Plaintiffs against him (first defendant) that he (first defendant) had sacked that labourer from the farm, but not for trespassing onto Plaintiffs land. He harped on the fact that he had cultivated the farmland with cocoa trees which were over five (5) years old by then.

He admitted that the chiefs and elders of Pampawie had asked the Plaintiffs to compensate him (first Defendant) with an amount one thousand Ghana Cedis (GH¢1,000.00) to enable them (Plaintiffs) to take over the entire five years old cocoa farm, but he refused to accept that offer/proposal from the chiefs and elders.

He denied in conclusion that the chiefs and elders of Pampawie threatened to ban and expel him from the town if he fails to take the amount of one thousand Ghana Cedis (GH¢1,000.00) from the Plaintiffs.

The second defendant also relied on her witness statement in defence on oath.

Under cross examination by the second Plaintiff who elected to cross examine the second defendant on behalf of the first Plaintiff, the second defendant said the land now in dispute is different from the subject matter she litigated with Preko and for which the chiefs of Pampawie had supported her.

She maintained that some of the matured cocoa trees on the now disputed land were cultivated by Preko on their (Defendants) land. The second defendant again maintained that if Preko did not trespass onto the Plaintiffs' land, as the second Plaintiff would like to point out, it implies that they (defendants) have also not trespassed onto their (Plaintiffs) land, because, Preko cultivated some of those matured cocoa trees on their (defendants') land.

She concluded that their (defendants') land is to the left hand side of that of the Plaintiffs' herein.

The defendants called a witness who corroborated their evidence in defence.

The DW1 relied on the witness statement he filed.

Under cross examination by the second Plaintiff, the DW1 admitted that he showed the boundaries of the now disputed portion of the land to the second defendant.

He (DW1) denied that the second defendant has trespassed onto Sekyere's land

He corroborated the evidence of the first Defendant and second defendant that some of the matured cocoa trees on the land cultivated by the late Foli Kakotse (i.e. second Defendant's father.)

The DW1 denied that he and his family had abandoned the now disputed land for about forty (40) years.

He noted that they entrusted the land to the care of Nana Abasa, the then chief of Pampawie.

He added that, the first defendant and second defendant refused to take the amount of one thousand Ghana Cedis (GH¢1,000.00) as ordered by the current chiefs and elders of Pampawie, because they have not trespassed onto the Plaintiffs' land.

The DW1 admitted that it was the chiefs of Pampawie who permitted him to cultivate portions of their land and he has paid tolls to them just the previous year on demand, after his return from Pusupu.

He concluded that one Amoah Preko came to cultivate the Amazonian type of cocoa on a portion of their (defendants) boundary, and they took swift action against him (Amoah Preko) and redeemed their land.

The issues for the determination of this court are whether or not:

1. The matter in dispute herein has been determined by the chiefs and elders of Pampawie and the rules of natural justice were observed or respected.
2. The subject matter in dispute herein is the same as the subject matter litigated in the judgment of 13th April, 2017,
3. The Plaintiffs have discharged the evidential burden placed on them by the law, and for which their reliefs must be endorsed by this court.

It is imperative to note that the first relief of the Plaintiffs is a declaration of title and possession of all that piece or parcel of farmland lying at a place popularly known and called old Police station along Ampeyo Road.

The boundaries as described by the Plaintiffs are stated supra. The matter was filed on the 28th day of August, 2019.

The third defendant who applied to join to protect an alleged interest he has in the subject matter herein, was joined after his application was heard on the 15th day of October, 2019. The court then made orders directing the parties herein to file their witness's statements and they did.

One Sekyere Koranteng of Pampawie Amanta filed a witness statement in favour of the Plaintiffs. Both the first Plaintiff second Plaintiff and Pw1 (i.e. Okyeame Koranteng) made reference to an arbitration held before the paramount chief of Pampawie, Nana Suboa Abasa II. The first Plaintiff stated that, "after the arbitration, the defendants, second Plaintiff and 1 (i.e. first Plaintiff), and some elders went to the said land and were shown the boundaries, but the defendants still trespassed onto our (Plaintiffs') land.

The second Plaintiff stated "I then reported them (i.e. Defendants herein) again, and so, the chief ordered the Defendants to go for their proceeds and never work on the said land again. The chief then advised myself and first Plaintiff to compensate Defendants with an amount of one thousand Ghana Cedis (GH¢1,000.00) since the Defendants might have

spent a lot in developing the land but they refused to neither take the money, nor leave the land”.

According to the witness statement of the PW1 (Okyeame Koranteng) “upon reaching there, the team confirmed that indeed the Defendants have trespassed onto the land of the Plaintiffs. The team therefore advised the Defendants to go and plead with the Plaintiffs to work on their (Plaintiffs) land....”

The PW2 (Nana Kwaku Agyepong) in his witness statement stated, “I was in my house three (3) months ago when the Defendant sent two bottles of Castle Bridge Gin to Abusuapanyin Kwadwo Ansah (the PW3) through me to be given to the first Plaintiff to go and plead on their behalf for trespassing into their land...”

In his witness statement filed, the PW3 stated “. ... During the deliberations (during the arbitration), it was revealed that Efo Etse (first Defendant) wrongly trespassed onto the complainants’ portion of the land, and was therefore ordered to withdraw ... the chiefs and elders showed a great deal of leniency and magnify (magnificence or magnanimity) to Efo Etse by compensating him with an amount of one thousand Ghana Cedis (GH¢1,000.00) for his time and energy wasted on the land”.

In his witness statement, the first defendant admitted that the Plaintiffs offered him an amount of one thousand Ghana Cedis (GH¢1,000.00). to enable him give ownership and possession of the cocoa farm to them but he declined.

The second defendant corroborated the evidence of the first defendant that the Plaintiffs offered an amount of one thousand Ghana Cedis (GH¢1,000.00) to them (defendants) but they rejected their offer.

From the evidence adduced so far, and going through the cross examination of the parties herein, it is crystal clear that, the audi alterm pattern rule (i.e. the rules of natural justice)

was not followed or respected by the chiefs and elders of Pampawie in declaring or ordering that the Plaintiffs herein pay an amount of one thousand Ghana Cedis (GH¢1,000.00) to the Defendants in order that they (Plaintiffs) take the cocoa farm of the Defendants. Meanwhile, the matter allegedly complained of or reported to the chief and the elders was a boundary dispute.

In their witness's statements filed, the second Plaintiff, PW1 and PW3 have been unable to make any reference to any judgment by a court of law on any matter within their knowledge and jurisdiction in relation to the subject matter herein.

The third Defendant filed a copy of the judgment obtained against the second Defendant herein and one Nana Yaw Ntem by one Nketia Kwaku of Ampeyo (who became the PW4) dated on Friday the 13th day of April, 2017. In the above judgment dated 13th April, 2017, the second Defendant (Co-Defendant therein) was the Krontihene of Pampawie and the first Plaintiff herein, was the witness of the Defendants therein.

According to the second Defendant (Co-Defendant) in that judgment, the grant to first Defendant's (second Defendant herein) grandfather was done in the 1930s and the tenant's (second and third Defendants herein) grandfather cultivated cocoa till he died and his children took over until bush fires destroyed almost all the crops on the land.

He (second defendant therein) continued " ...the land remained uncultivated for some time before about some decades ago, one Amoah Preko Mensah, a subject of Pampawie entered and the children of Gakpotse/Kakotse successfully sued him and was ejected from the land" ...the cocoa and mangoes planted by Amoah were again burnt by the bush fires".

The first Plaintiff herein (who was a witness in that case) stated, "Their grandfather was the one who gave the land to Defendant's (second and third Defendants herein)

grandfather to cultivate cocoa on abunu tenancy. After the Defendants grandfather's farm was destroyed by fire, the family relocated leaving the land uncultivated for a long time". He added that "the defendants obtained permission from the elders to cultivate it again, and has since planted cocoa trees which are about three years old" The full evidence in defence of the second defendant herein by the first Plaintiff herein was captured on Wednesday the 4th day of January, 2017.

The Co-defendant stated "about four (4) years ago, (i.e. about 9 years now), the Defendant (i.e. second defendant) herein in the company of his brother came to the elders to inform them about the defendant's (second defendant's) intentions of cultivating the land, and they were granted the permission and the defendant's brother (DW1) was asked to go and show her the boundaries ".

This suggests that the defendants herein have followed due process for re-entry into the farmland granted to their grandfather by the chief and elders of Pampawie. Yet still, they (defendants) therein lost the matter against Opanyin Kwaku Nketia in that judgment.

Clearly, the subject matter therein which has to do with the bamboo grove as a boundary feature is a little distinct/different from the subject matter herein.

In the witness statement of the first defendant herein, he stated;

This land was given to me for cultivation by Mr. Agbenu Kakotse (DW1 herein), Carl Kakote (third Defendant) herein and Madam Lydia Kakotse, my wife (second Defendant herein). I was cultivating this disputed land when my wife (second Defendant) was sued before this court by one Opanyin Kwaku Nketia, one of the boundary owners Plaintiffs described in their writ of summons. During the pendency of Opanyin Kwaku Nketia's action before this court, the boundaries were demarcated to the parties including the second defendant and third defendants) herein by the elders. About six months ago,

the Plaintiffs started claiming ownership of majority of my cocoa trees. They again demarcated my cocoa farm claiming ownership of same”.

It has been the statement of the second defendant herein that, “That during the earlier trial, the first Plaintiff herein came to testify on my behalf Indicating that this disputed land belongs to my grandfather. We have been cultivating this land for the past four (4) years until recently, when the first Plaintiff and some people came to us to give them ownership and possession of the matured cocoa farm to the second Plaintiff”.

The Plaintiffs have been unable to cross examine the Defendants herein on their claim on these vital issues.

Under cross examination by the second defendant, the PW1 admitted that he knows that the portion of land now in dispute was earlier cultivated by the father of the second defendant (one Foli Kakotse)

He (PW1) concluded that, the land litigated earlier between Opanin Kwaku Nketia and the second Defendant herein, and for which the first Plaintiff and Mankrado Yaw Ntem came in as their witness and a party, belongs to the people of Ampeyo.

This is part of the cross examination between the PW1 and first Defendant.

Question by first Defendant:

Do you remember that you invited me to the palace and one Okyeame Koranteng requested that I should release the farm to the stool in compensation for an amount of one thousand Ghana Cedis (GHC1,000.00)?

Answer by PW1:

Yes, that is so. We even gave out the money in cash but you rejected it.

As a court, I have discovered that the main architects behind this current action by the Plaintiffs are, the first Plaintiff, Second Plaintiff and PW1 (Okyeame Koranteng) who filed the witness statement but failed to appear in person, but was impersonated by one Nana Kwaku Agyei, Gyantuahene of Pampawie) and Nana Kweku Agyepong III of Pampawie.

These people have decided that the cocoa farm cultivated by the first defendant, who is a licensee to the second defendant and third defendant must be taken over by the Plaintiffs (who are subjects of the Pampawie stool) at all cost. Else how could they invite first defendant into the palace and asked that he releases his newly cultivated cocoa farm to the second Plaintiff for a cash compensation of only one thousand Ghana Cedis (GH¢1,000.00)?

Nana Kwaku Agyei and Captain Peter Kwasi Ansah have both not filed any witness statements. Yet they came in to represent the PW1 and PW3 respectively. This act by Nana Kwaku Agyei and Captain Peter Kwesi Ansah is fraudulent and needed to be condemned in its entirety. I shall therefore not put any weight on their evidence and cross examination in this matter.

In the witness statement of the PW4, he used both Kwaku Sekyere and Kakotse as his boundary owners. Even then, the Plaintiffs waited until this court moved for a locus inspection and the locus report was filed and copies given to the parties before they made the PW4 to file his witness statement on the 17th day of December, 2020 without leave of the court.

The Plaintiffs earlier applied and moved the court to take the evidence of the PW4 in Ampeyo. But on the 5th day of March, the second Plaintiff filed an application to discontinue with the evidence of the PW4.

On the 14th day of December, 2021 one Nana Yaw Ntem filed a copy of a process captioned "confirmation of customary Arbitration between Kakotse Family and The Sekyere Family of Pampawie –Amanta " and which has been thumb printed by two persons without a jurat.

Earlier on the 8th day of October, 2020, one Nana Soboa Kwadzo Abasah II, paramount Chief of Pampawie Amanta Traditional

Area filed a process informing the court that the original portion of the land belongs to the Pampawie -Amanta stool, which was given to the late Kakotse, the Defendants' grandfather as a tenant farmer on abunu basis. He continued that, ever since the death of Kakotse, his sons and grandchildren have been cultivating the said land, and paying their annual dues to the Pampawie Amanta stool as tenant farmers. He therefore implored the court to allow some named personalities (some of whom have misconducted themselves by openly displaying biases in favor of or against the parties herein) to join. As the opportunity did not avail itself, such personalities were not relied on.

In the classic case of Adjetey Agbosu & ors V Kotey & ors [203- 2004] SCGLR, 420, 425 and 426, the court held.

" a litigant who is a defendant in civil suit does not need to prove anything the Plaintiff who took the defendant to court has to prove that he/she is entitled to from the Defendant"

The above quotation/law, can also be seen in the Evidence Act, 1975 NRCD, 323..

In another case of Tetteh V Hayford [2013] 43 MLRG @ 84 Sofia A B. Akuffo J.S.C (as she then was)stated:

" to succeed in an action for a declaration of title to land, a party must adduce evidence to prove and establish the identity of the land in respect of which he/she claimed a declaration of title"

This can also be seen in the case of Bedu V Agbi [1972]2 GLR 238 per Justice Dotse J.S.C, lines 10 – 38 at the court of Appeal.

In the instant suit, the first Plaintiff in cross examination of DW1 asked

Q. On your return from Pusupu after forty (40) years stay over there, didn't you realize that there are elder cocoa bearing trees bearing fruits before you started with the cultivation of the farmland?

A. Yes, there were cocoa bearing trees on the land, but they belonged to my paternal uncle Foli Kakotse.

Q. Are you aware that the descendants of Kakotse do pay tolls /dues to the Sekyeres'?

A. Yes, it was only last year (2021) that I was made to pay three (3) bags of cocoa to you. But, the Defendants were asked to pay half a bag of dried cocoa beans.

Q. I put it to you that we share a common boundary with the Defendants herein.

A. That is not true''

The Plaintiffs in their writ of summons, in describing the land the subject matter in issue, have not used the Defendants as sharing any boundary with them. So, how come now, the first Plaintiff is stating that there is a common boundary between them?

Also, the court has established that the Defendants had abandoned their farm for some time. But, when they returned, they went back to the usufruct title holders and sought permission for re-entry and they were granted.

From the evidence adduced in court, the facts and the law, I find that the reliefs of the Plaintiffs must fall.

I hereby enter judgment in favor of the Defendants (especially second defendant and third defendant to whom the first defendant is a licensee) . The Plaintiffs, their workmen and assigns are hereby restrained from interfering with the farmland of the Defendants herein.

I award a cost of four thousand, five hundred Ghana Cedis (GH¢4,500.00) in favor of the Defendants against the Plaintiffs herein for instituting such a frivolous and vexatious action against them before the court.

The Defendants are to move into possession to maintain and cultivate the farm to which they are already in possession.

H/W ERIC K. FIAMORDZI ESQ.

(MAGISTRATE)

