

**IN THE DISTRICT COURT, KADJEBI IN THE OTI REGION OF THE REPUBLIC OF
GHANA, HELD ON 25TH DAY OF NOVEMBER, 2022 BEFORE H/W ERIC K.
FIAMORDZI ESQ, MAGISTRATE**

Suit No: A1/07/2021

JOSHUA YAW ATIAGO SUING FOR AND ON BEHALF

OF OTHER CHILDREN OF THE LATE NICHOLAS ATIAGO

OF KADJEBI

- PLAINTIFF

VS

1. ADELE KUDJO OPERATOR

- DEFENDANTS

2. LINCOLN BOAKYE YIADOM OF SOMUNANTI/ WORAWORA

JUDGMENT

The plaintiff initiated this action against the defendants jointly and severally for the following reliefs:

1. Declaration of title, ownership and recovery of possession of all that piece or parcel of cocoa farm situate and lying at a place commonly known and called Somunanti, which is bounded by the following:
 - a. On one side by the property of Opanyin Nathaniel Atiako.
 - b. On another side by the property of one Pastor Osei.
 - c. On the third side by Kadjebi – Somunanti main lorry road and,
 - d. On the last side towards the hill by the property of one Joe.
2. Perpetual injunction restraining the defendants, their agents or assigns and privies and all other persons claiming through the defendants.
3. Costs.

SUMMARY OF THE SUBJECT MATTER OF CLAIM

Plaintiff is a teacher at Kadjebi D/A JHS and resident at Kadjebi and brings this action for and on behalf of his other siblings. First defendant is a chainsaw operator and a farmer staying at Somunanti near Kadjebi and second defendant is an unemployed person resident at Worawora.

Plaintiff continued that his late father (Nicholas Atiako) acquired a vast track of land (cocoa farm) by means of inheritance from his father (the late Henry Atiako).

He (plaintiff) continued that, after the death of his grandfather, the land in issue was shared among his children including plaintiff's father (Nicholas Atiako). Plaintiff further states that his late father cultivated cocoa and other economic trees/ crops on the disputed land without any challenges/ problems from any quarters until about four (4) to five (5) years ago when the first defendant encroached on this land and started cultivating food crops like ginger, maize, cassava and felled economic trees which are on the land.

According to the plaintiff, the first defendant alleged that it was the second defendant who gave out this disputed land to him (first defendant). The second defendant was invited from Worawora to Somunanti and he admitted giving out the now disputed land to the first defendant, but explained that the plaintiff is the rightful owner of the land. All efforts to eject the first defendant failed hence this action to seek redress before the court.

The first defendant filed a notice of counter claim and counter claim as follows:

1. Recovery of an amount of thirty thousand Ghana Cedis (**GHC30,000**) being the cost price of three acres of matured cocoa farm he (first defendant) was asked by the second defendant to cultivate and maintain and which is at a place known and called Somunanti which the Plaintiff had unlawfully taken over from the first defendant but failed to pay for the cocoa trees cultivated by the first defendant for the past seven years.

2. An order of the court restraining the plaintiff from entering the cocoa farm until he (plaintiff) fully paid for the cocoa trees in the cocoa farm as well as other food crops like plantain, cocoyam, banana, palm fruits and cassava and others in the farm.

SUMMARY OF COUNTER CLAIM BY FIRST DEFENDANT

The first defendant is a farmer as well as a chain saw operator resident at Kadjebi. The plaintiff is a teacher living at Kadjebi near the Kadjebi market. The first defendant said, in the year 2013, he the first defendant was looking for a farmland to cultivate cocoa thereon. So, he encountered the second defendant and one Adjakoku Akuamoh now deceased during the 2013 major farming season, and they took him (first defendant) and showed him their farmland at a place known and called Somunanti.

He (first defendant) added that, at that time, the plaintiff was not introduced to him as one of the beneficiaries of the farmland which is currently the subject matter in dispute.

According to the first defendant, he and his landlords (that is second defendant herein and the late Adjakoku Akuamoah) had agreed that he (first defendant) should cultivate the land with cocoa trees and after they are matured, they would make an agreement on the entire farm cultivated by him (first defendant).

In the month of March, 2020, the first defendant continued, the plaintiff came to him that he (first defendant) should leave the farm because the farm does not belong to him (first defendant). So he told the plaintiff that it was the second defendant and the late Adjakoku Akuamoah who gave the land to him (first defendant) to cultivate.

He (first defendant) continued further that, on the 14th day of October, 2020 he was served with a writ of summons from the court by the plaintiff. But on the 17th day of October, 2020, without any order from this court, the plaintiff entered the first defendant's cocoa farm and started harvesting the cocoa beans, plantain, cassava, banana and cocoyam. So,

he (first defendant) reported the conduct of the plaintiff to the police in Kadjebi for stealing food stuffs from his (first defendant's) farm.

He concluded that, all efforts by him to make the plaintiff pay for the cost of cultivating the three (3) acres cocoa farm by him (first defendant) cannot succeed hence, this action to seek redress.

The plaintiff filed a reply to the counter claim of the first defendant.

According to the plaintiff, he would deny all the allegations contained in the counter claim of the first defendant in court and say that he (first defendant) does not deserve any compensation for cultivating the cocoa trees on his (plaintiff's) land because, the land does not belong to the second defendant before he granted same to the first defendant to cultivate.

He (plaintiff) added that, he is denying the relief two of the first defendant's counter claim and stated that, he (first defendant) cannot maintain those matured cocoa trees that were planted by his (plaintiff's) late father (Nicholas Kweku Atiako) and get compensated with the counter claims he (first defendant) is seeking to get. So, he should be restrained by the orders of this court.

The second defendant also filed a statement of defence but without a counter claim.

According to the second defendant, the plaintiff has no capacity or locus to initiate this action since his step father one Kweku Mensah, who has been declared earlier as the sole owner of the now disputed land is alive and within the jurisdiction.

The second defendant stated that, there was a tripartite meeting between him (second defendant) and one Nana Amoako on one hand, and one Kwaku Akuamoah on another hand, as well as the Plaintiff's step father called Kwaku Mensah over the same subject

matter which is before this court. He added that the land, subject matter which is at Somunanti in Kadjebi was acquired by their grandfather.

He (second defendant) continued that, about nine (9) years ago, they had a meeting and the outcome was that, they had agreed to cut down the aged long Tetteh Quarshie cocoa trees on the now disputed land and instead replant the high breed cocoa trees. Consequently, the whole vast land with the cocoa trees were cut down to be replanted. But, in the cause of the replanting, Kwaku Mensah (the step father of the plaintiff) withdrew from the original plan saying that the land he is occupying at Worawora is too much and above his strength.

He continued further that, in the cause of replanting, his elder brother Nana Amoako and Opanyin kwaku Akuamoah passed on around the years of 2012 and 2016 respectively.

The second defendant intimated that, he therefore decided to give out the remaining land which was becoming fallow to the first defendant herein to cultivate to prevent encroachment by other people. So he did.

It is the case of the second defendant that, after the first defendant has cultivated the land for about seven (7) years since, the plaintiff has come in to claim same, meanwhile, his (plaintiff's) step father has also abandoned visiting the land until the appearance of the plaintiff now on the disputed land.

The second defendant maintained that, the attention of the family at Worawora was drawn to the forceful eviction of the first defendant on the land by the plaintiff, and they have agreed that Kwaku Mensah is to still own the portion of land now in dispute, but to maintain the first defendant who has cultivated same as a workman/ caretaker.

He said, both the plaintiff and Kwaku Mensah declined the above offer and instead decided to compensate the first defendant which they are yet to comply with about four (4) months ago before this cation was initiated against them by the plaintiff.

He concluded that, he has endorsed the counter claim of the first defendant that he (first defendant) is compensated with the amount of thirty thousand Ghana Cedis (GH¢30,000.00).

The second defendant attached an exhibit captioned “Forest Land Receipt” to his statement of defence for perusal of the court.

HEARING

On the return date, the plea of the defendants were taken and they both pleaded not liable to the reliefs of the plaintiff. The court consequently made an order that, the parties file their witnesses’ statements and any relevant document(s) in their possession in respect of the subject matter herein and they did.

On the 17th day of December, 2020, the plaintiff applied viva voce to the court that, he has been advised by the chief in Worawora to discontinue with the matter before the court for it to be settled amicably at home swiftly. But, the defendants vehemently opposed to the application of the plaintiff. The court however granted to the application of the plaintiff.

On the 8th day of March, 2021, the Plaintiff applied for an extension of time for the matter to be resolved out of court. The court obliged him.

However, on the 14th day of April 2021, the plaintiff announced that settlement had broken down. The information was corroborated by the defendants. As such an order was made by the court for the matter to be continued in open court.

The evidence in chief of the plaintiff was taken/ heard on the 26th day of August, 2021, after a couple of adjournments. He relied on the witness statement he filed in his evidence in chief to the court.

Under cross examination by the first defendant, the plaintiff told the court that, one Kweku Mensah (the father of the first defendant) was only a caretaker to his father on the now disputed land.

Plaintiff admitted that, he went and harvested crops like cassava, cocoyam, plantain and cocoa pods on the disputed farmland without the consent of the first defendant. He explained that his action was informed by the fact that the elders met them (both parties) over the matter and the first defendant declared that he had nothing to do with the farm any longer.

He (plaintiff) concluded by denying that, he sent one Adiza Moses to quantify the farm in order for him (plaintiff) to compensate the first defendant appropriately/ adequately.

Under cross examination by the second defendant, the plaintiff maintained that the now disputed farmland belongs to his father (now deceased) who entrusted same to the care taker of his younger brother, Kweku Mensah.

Plaintiff relied on a witness who also relied on the witness statement he filed. The Plaintiff's first witness was cross examined by the second defendant.

After the close of the case of the plaintiff, the defendants were called upon to open their defence and they did. The second defendant elected to open the defence on his behalf and on behalf of the first defendant. He (second defendant) also relied on his witness statement in his defence before the court.

Under cross examination by the plaintiff, the second defendant said he informed his younger brother before permitting the first defendant to go and cultivate the now disputed farmland. He added that, the first defendant pays tolls to him (second defendant) as a laborer on behalf of their family.

The defendants also relied on a witness to make their case. The defendant's first witness was cross examined by the plaintiff.

The issue for the determination of the court are whether or not:

- a. All the reliefs of the plaintiff are to be endorsed or
- b. All the counter claim of the defendants are to be endorsed.

In the case of Antwi V. Mortey [2015] 90 GMJ, 89, Owusu J.A held:

“The common law principle that the defendant does not need to prove any defence and therefore, does not need to lead any evidence has been revolutionized and codified in the Evidence Act 1975 NRCD 323.

For instance, in the case of: In Re Ashaley Botwe Lands; Adjetey Agbosu & ors V Kotey & ors [2003-2004] SCGLR, 430,425-426, His Lordship Brobbey J.S.C (as he then was) summed up this principle in the following manner: - The effect of section 11(1) and 14 and similar sections in the Evidence Act, 1975, may be described as follows: -

A litigant who is a defendant in a civil suit 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 that determination depends on evaluation of the 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/ her favor, then he/she 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 favor.

The logical sequel to this is that, if he (defendant) leads no facts or evidence, the court will be left with no choice but to evaluate the entire case on the basis of the evidence before the court, which may turn out to be the only evidence of the plaintiff.

If the court chose to evaluate and believe the only evidence on record, the plaintiff may win and the defendant may lose. Such loss may be brought about by default on the part of the defendant.

In the light of the statutory provisions, literally relying on the common law principle that the defendant does not need to prove any defence and therefore does not need to lead any evidence may not always serve the best interest of the litigant even if he/ she is a defendant.

In the instant suit, the plaintiff is asking for declaration of title of ownership and the recovery of possession of all that piece or parcel of cocoa farm at a place commonly known and called Somunanti which boundaries he has described supra.

He is also asking for perpetual injunction restraining the defendants, their agents, assigns and privies and all other persons claiming through the defendants and costs.

In his summary of the subject matter of claim, the plaintiff stated that, his late father, Nicholas Atiako acquired a vast track of land (cocoa farm) by means of inheritance from his father, Henry Atiako. That after the demise of his grandfather, the land was shared among his children including Nicholas Atiako (plaintiff's late father).

The plaintiff has been unable to mention the other children of Henry Atiako among who the farmland was shared and the size of each farmland. The plaintiff's first witness has however filled in that gap partially, when he described the land as a three acre(s) farmland.

The plaintiff continued that, his late father cultivated cocoa and other economic crops on the disputed farmland without any challenges from any one until about four (4) to five (5) years ago when the first defendant encroached on this land and started cultivating food crops like ginger, maize, cassava and felled economic trees which are on the land.

The above particular piece of evidence has not been corroborated by the plaintiff's first witness, or the defendants.

The un-endorsed/ unsigned witness statement of the plaintiff's first witness, which is on the face of the records, and on which I shall not put much weight as a court states that "I am further stating that, the said land is about 4 acres of cocoa farmland which was under my care and owned by my brother the late Mr. Nicholas Atiako. All what I did on the land was instructions from my brother, the late Mr. Nicholas kweku Atiako..."

It became evidently clear under cross examination by the second defendant on the plaintiff's first witness that, the old cocoa trees on the land were cut down and both the plaintiff's first witness and the second defendant were compensated for being the owners of the farmland aforementioned.

It was later on that the Plaintiff's first witness, the second defendant and the defendant's first witness decided to allow the first defendant to cultivate the farmland with the new cocoa trees and other food crops on the land, on behalf of the family.

In his own words, he (plaintiff's first witness) received a cutlass as compensation for the cutting down of the old cocoa trees on the land.

According to the second defendant, the Agric officer gave them new cocoa seedlings to go and plant/ cultivate. But, the plaintiff's first witness denied same, just as he denied taking the money attached to the cutlass and wellington boots.

The plaintiff's first witness under cross examination by the second defendant stated that, "I informed Nana Amoako that I was not going to work with you. You started with the planting of the cocoa seedlings before Nana Amoako died."

The following also ensued between the plaintiff's first witness and the second defendant.

Q by D2: Are you aware that the plaintiff has not cultivated the now disputed land before?

Ans by PW1: As for that, he has not.

Q by D2: Do you know that it was after the arbitration we had in Worawora before the plaintiff got to know of the land in issue?

Ans by PW1: No

A reasonable man in the streets of Kadjebi would have questioned why the plaintiff has been unable to state clearly that it was the defendants who cultivated the crops on the land. He stated that there were matured cocoa trees cultivated by his father.

In his reply to the counter claim filed by the defendants, the plaintiff stated that the first defendant does not deserve any compensation for cultivating the land with cocoa trees because the land does not belong to the second defendant who granted it (that is the land) to him (first defendant) to cultivate.

From the evidence adduced before this court, it is crystal clear that it was the first defendant who cultivated the cocoa trees which are currently on the land together with other food crops. The court moved into locus in quo.

The modus operandi of the plaintiff herein are to deny the first defendant the benefits of his toils on the land.

From the evidence adduced before the court, the facts and the law, I enter judgement in favor of the defendants against the plaintiff on their counter claim.

Meanwhile, I grant ownership of the farmland to the plaintiff, who is either to compensate the first defendant with the amount of thirty thousand Ghana Cedis (GH¢30,000.00) or the farm is shared into three parts for the plaintiff to take and maintain one part, and the first defendant to take and maintain the two-thirds of the farmland for the next twenty-five (25) years.

If the sharing is to be taken by the plaintiff, it is the first defendant who is to take/ select his portion before the plaintiff.

I award a cost of two thousand Ghana Cedis (GH¢2,000.00) against the Plaintiff in favor of the defendants herein.

H/W ERIC K. FIAMORDZI

(MAGISTRATE)