

**IN THE DISTRICT COURT HELD AT TESHIE- NUNGUA ON FRIDAY THE 17<sup>TH</sup>  
DAY OF MARCH, 2023 BEFORE HER WORSHIP PRISCILLA SOPHIA YEBOAH  
AS MAGISTRATE**

**TIME: 11:20 AM**

**SUIT NO. GTNDC/A1/01/15**

**ALEEGBE KOJO  
OF NUNGUA-ACCRA**

**PLAINTIFF**

**VRS:**

**1. ALBERT ATIAKU BORKETEY  
2. ATTA ABAM  
3. ANTI AKUA  
ALL OF NUNGUA-ACCRA**

**DEFENDANTS**

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***JUDGMENT***

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**PARTIES PRESENT EXCEPT 1<sup>ST</sup> DEFENDANT**

**COUNSEL FOR PLAINTIFF**

**ABSENT**

*On the 12<sup>th</sup> of January 2015, per her amended statement of claim, Plaintiff through her Attorney claimed ownership of the land in dispute which she claims through her grandmother one Kotey Tsotso*

***PLAINTIFF'S CASE***

*The 2<sup>nd</sup> and 3<sup>rd</sup> defendants are son and mother and together with 1<sup>st</sup> defendant are all adjoining neighbours to the plaintiff.*

*Plaintiff avers that the land in issue which measures 0.19 acres originally belongs to her deceased mother by name Tsotsoo Kotey. She says she is in Court because the defendants have trespassed unto her land through the following acts:*

- The 1<sup>st</sup> Defendant has put a container on her plot about 8 months prior to this action. The 2<sup>nd</sup> defendant has also constructed two separate chamber and hall on her land while 3<sup>rd</sup> defendant has started a building project on portion of plaintiffs' land.*

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- Plaintiff says all efforts to persuade defendants to vacate from her land has yielded no result so she reported the defendants conduct to LEKMA (the municipal authority) but since the defendants continued with their acts of trespass the only option left is to sue the defendants in Court hence the instant action for the following reliefs:*

- 1. An order directed at the 1<sup>st</sup> defendant to remove her container from the plaintiff's land.*
- 2. An order directed at 2<sup>nd</sup> defendant to atone tenancy with the plaintiff in respect of the two chamber and hall constructed on plaintiff's land*
- 3. An order directed at 3<sup>rd</sup> defendant to cease encroachment or developing portion of Plaintiffs land.*
- 4. Perpetual injunction against the defendants restraining the defendants, their privies, servants, agents and all who claim interest through the defendants from interfering with the disputed portion of land.*

## **CASE FOR THE DEFENDANTS:**

- *2<sup>nd</sup> Defendant maintained their original statement of defence without amending same to correspond to the plaintiffs amended statement of defence.*
- *2<sup>nd</sup> Defendant denies all allegations by the plaintiff. 2<sup>nd</sup> defendant who is 3<sup>rd</sup> defendant's son avers that he and his family have been on the disputed land undisturbed for ages.*
- *According to 2<sup>nd</sup> defendant the land the plaintiff is claiming forms part of a large tract of land which originally belongs to his great grandfather which was passed on to her mother who is also the 3<sup>rd</sup> defendant by inheritance and they have been living on the land for over thirty years.*
- *2<sup>nd</sup> defendant contends that plaintiff has never challenged himself and her 3<sup>rd</sup> defendant on the land. That it was 2<sup>nd</sup> defendants' family who rather confronted Plaintiffs family to stop developing a structure on the portion of their land which matter went before the then MCE of LEKMA who visited the scene and advised 2<sup>nd</sup> defendant to allow the plaintiff put up her structure so that peace will prevail.*
- *2<sup>nd</sup> defendant claims that subsequent to the intervention by the MCE the plaintiff had gone further to develop another structure which has blocked the main gate which serves as access to the defendants.*
- *2<sup>nd</sup> defendant further contends that the plaintiff is not entitled to any of her reliefs and counter-claims the following:*
  1. *An order to recover his land the subject matter of this suit from plaintiff since the portion of land taken by the defendant forms part of the large tract of land belonging to 2<sup>nd</sup> defendants' family.*

*Neither the 1st nor 3<sup>rd</sup> defendant filed statement of defence or pleadings. Under order 18 of C149 this case being a land case, pleadings are not mandatory unless the Court orders.*

*The Court on its own accord ordered for a composite plan to enable the court deal with the boundary and encroachment issues.*

*I wish to state that so many factors account for the delay in this case some being change and transfer of Judges, as I happened to be the third judge to have handled this case and the delay in the tendering of the report to Court. I would therefore use the opportunity to apologize for the administrative delays occasioned by this case.*

*In my opinion the survey report or the composite plan should be able to resolve this issue without any further trial.*

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#### **ISSUES FOR DETERMINATION:**

- 1. *Who owns the disputed portions of land?***
- 2. *Whether 1<sup>st</sup> defendant is compellable to remove her container from the disputed land.***
- 3. *whether or not plaintiff is entitled to have 2<sup>nd</sup> defendant atone tenancy with her***
- 4. *whether 3<sup>rd</sup> defendant can be ceased from developing on the disputed area***

#### **THE SURVEY REPORT**

- *The parties were ordered to submit their respective site plan for the superimposition and drawing of a composite plan. My records show that 1<sup>st</sup> defendant who at some point stopped attending Court did not submit her site plan so the report does not cover her.*
- *2<sup>nd</sup> and 3<sup>rd</sup> defendant who are son and mother submitted one indenture and site plan that bears the name of one ABOTSI- ALARBI ABAN covering an acreage of 0.31.*

- *On the part of the plaintiff she submitted two site plans. One was filed on the 12<sup>th</sup> of January 2015 and marked as Exhibit RL which cover an arear of 0.25 acre and the second one 0.19 acres.*

*On the 5<sup>th</sup> of April 2022 the surveyor identified as CW1 tendered and explained the content of the composite plan and survey report which had been filed long before I assumed office. His evidence is captured at page 76 of the ROP. The parties with the exception of 1<sup>st</sup> defendant who abandoned the Court had the opportunity to cross examined the witness. The following are excerpts of questions asked by the parties.*

***PLAINTIFF'S ATTORNEY:***

***Q. I want to know whether none of them has encroached onto my land,***

***Ans. My Lord per the composite plan, in respect of the land shown on the ground there is an encroachment of about 15feet at the North- Eastern part of the plaintiff's boundary and also about 20 feet into the magenta where P3 and P4 are***

***Q. D3 did not submit a site plan so how were you able to determine her portion of land?***

***Ans. The 3<sup>rd</sup> defendant did not submit her site plan so on the composite plan nothing is shown for her.***

***Q. So between ours and the 2<sup>nd</sup> Defendant who has entered into the others land.***

***Ans. My Lord per what both parties showed on the ground, there is an encroachment but with the site plans presented, there is little or no encroachment there but I can't tell who has encroached the other.***

***Q, you should be able to tell who has entered into whose land.***

***Ans. What I can say is that there is an encroachment over there which I don't know who the owner is.***

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*Plaintiff continued her cross examination through her Counsel on the 25<sup>th</sup> day of March 2022 with the ff questions,*

*Q. You agree with me that there are two separate and distinct overlapping areas on the composite plan*

*Ans: Yes My Lord.*

*Q. You agree with me that there are two separate and distinct overlapping areas on the composite plan*

*Ans. Yes my Lord.*

*Q. Now on the composite plan which you made you see that in the rectangular area shaded disputed, you will see that Aleedbge Kojo's building which you have shown portion of it falls within the rectangular shaded area?*

*Ans. Yes*

*Q. so you agree with me that the plaintiff is in possession of the Land which is in the rectangular shape not so.*

*Ans. Yes she has something there*

*Q. And she lives there.*

*Ans. I can't tell.*

*Q: You will see that there is a difference between the purple and green which all relates to Abam properties built by 2<sup>nd</sup> defendant.*

*Ans. Yes*

*Q. you will agree with me that, that difference has shifted southwards into the disputed land creating from there.*

*Ans. There is a shift.*

*Q. the day you went to the land was Aunte Akua (D3) personally <sup>6 to 9</sup> show her land on the ground?*

*Ans. Yes she was there but her daughter showed the boundaries.*

*Cross- examination by 2<sup>nd</sup> defendant (page 81 -83 of ROP)*

*Q. When you look at the composite plan there is an intersection of my site plan and that of the plaintiff so how can you tell who has encroached on the other land.*

*Ans. This is for Court to determine.*

*Q. Please before you went to inspect the Land, we gave you our site plan but on the day of the inspection, the parties were identifying their respective lands.....*

*Ans. The composite plan consist of both...*

*Q. My land according to my site plan is 0.31 acres so what is the size of the plaintiffs.*

*Ans. The plaintiff's size is 0.19*

*Cross –Examination by D3 (page 83) of the ROP*

*Q. when you came to measure the land it was my children who identified my portion. Per your investigations, I want to know whether I have encroached onto plaintiff's land*

*Ans: My lady there is an overlap between the 3<sup>rd</sup> Defendant and plaintiff as on the ground but not with plaintiff's site plan as there is no overlap.*

*Q. So I am putting it to you that I have not encroached on any body's land*

*Ans. There is an encroachment with what was shown on the ground.*

**ANALYSIS**

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*I wish to emphasis that this report is based soley on the expert report. Accuracy of the report because the report was not challenged from both ends. Beside its being an expert report I have no reason to doubt the report .*

*From the breakdown of the Report, starting with D3 Aunty Akua the area marked 3d1-3d4 was the land shown by 3<sup>rd</sup> defendant but the 3<sup>rd</sup> defendant did not produce a site plan for superimposition. From the physical appearance plaintiffs land intersects with that of*

*3<sup>rd</sup> defendant hatched black around the area marked P4. Per the superimposition of the plaintiffs site plan there is no encroachment from D3.*

*Between plaintiff and the 2<sup>nd</sup> defendant there is an encroachment but the expert advise and myself could not tell who encroached first. There is no report for 1<sup>st</sup> Defendant.*

*Even though the 3<sup>rd</sup> defendant has no site plan going by the dictates of the plaintiffs' site plan, the 3<sup>rd</sup> defendant has not encroached on the Plaintiffs land. I will therefore order that the status quo be kept meaning each maintain her land as it is prior to litigation.*

*With regards to 2<sup>ND</sup> Defendant and the plaintiff as indicated from the composite plan, each parties land has encroached the others. Whiles defendant traces his land from his grandfather over thirty years ago, I do not know for how long the land was acquired by the plaintiff's family.*

*Plaintiff did not challenge the defendant's averment that the plaintiff came to meet the defendant and his family on the land. in other to be fair to both parties I shall order for a split of the disputed arear into two equal half's*

*For the 1<sup>st</sup> defendant she is deemed to have abandoned the litigation. The conduct of 1<sup>st</sup> defendant infers that he has no defence to the action.*

*I shall therefore grant the plaintiff her relief against the 1<sup>st</sup> defendant for the first defendant to remove her container from the disputed area.*

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*Cost of GHC2,000 against 1<sup>st</sup> Defendant.*

*Cost against 2<sup>nd</sup> and 3<sup>rd</sup> defendant is vacated.*

**(SGD)**

**H/W PRISCILLA SOPHIA YEBOAH**

**DISTRICT MAGISTRATE COURT**