

IN THE DISTRICT COURT HELD AT TESHIE- NUNGUA ON TEUSDAY THE 14TH
DAY OF FEBRUARY, 2023 BEFORE HER WORSHIP PRISCILLA SOPHIA YEBOAH
AS MAGISTRATE

SUIT NO. GTNDC/A1/16/18

NATHANIEL MARTEYE SANSNIE

PLAINTIFF

H/NO.1064/6

MANNA-TESHIE

VRS:

SAMUEL AGO AMARTEY

DEFENDANT

UNNUMBERED HOUSE

TESHIE

PARTIES

PRESENT

COUNSEL FOR BOTH PARTIES

ABSENT

JUDGMENT

On the 20th of September, the plaintiff through a writ of summons issued by the registry of this Court against the defendant sought the under listed reliefs:

1. An order directed at the defendant to unconditionally issue receipt and execute instruments covering sale of land to the plaintiff.
2. An order restraining defendant or his agent assigns, or any person acting on his behalf or claiming through him or the Estate of Laryea safari from ever interfering with the land or the quite enjoyment of same by the plaintiff.
3. Any orders as this honorable Court may deem fit to make.
4. Cost.

The Defendant denied the sale of the land by his brother the late Safari to Plaintiff and states that Plaintiff is only a tenant whose tenancy has long expired and should be evicted. Defendant therefore proceeds to make the demands as per his counterclaim as follows:

- a. An order directed at the plaintiff to remove her container from the land in dispute*
- b. An order for the recovery of the amount of ghc546.00 being rent arrears and further recovery of rent of ghc6.00 per month for any subsequent months for which the plaintiff's container remains on the land in issue.*
- c. Interest over the amount in demand from time of arrears till final date of payment.*
- d. Cost.*

PLAINTIFF'S CASE

The grounds for his claims are that about 14 years ago, spanning 2009, he leased a parcel of land measuring approximately 0.05 acre from one Mensah Laryea late (who also in his life time popularly known as Safari.) The lease agreement according to the plaintiff was for two years, commencing 31st July 2009 to 2011 and it was for use by him and his wife Felicia Tele Amartey hereinafter called PW1. Upon the expiration of the lease, the late Safari offered to sell the land to the Plaintiff for an amount of GHc 4,500.00. Plaintiff claims he accepted the offer and agreed to pay for the purchase price on installment basis since he and his wife had established themselves on the land selling basic essential provisions such as sugar, milk, beverages etc. essentials. Plaintiff further claims the payment for the land was done in three instalments as follows: first paid GHc1080.00 to the late Safari which payment was witnessed by Mr. Thomas Adjetey Adjei who also witnessed in this case as witness for Plaintiff. The late Safari later collected the balance of the money over period of time in cash and in kind by sometimes picking items from Plaintiff wife's shop. All attempts to get the late Safari to acknowledge receipt of the payments failed. Plaintiff and his wife remained and had quiet and peaceful enjoyment of the land, plying their trade without disturbance from the late Safari or any person claiming or acting on his

behalf until the death of Safari. Plaintiff contacted his customary successor to regularize his title of the land for him but he refused. Several interventions by other family members failed to resolve the issue causing Plaintiff's wife to institute an action against Defendant but same was dismissed by this honorable Court for her lack of capacity since she was not a party to the transaction with the late Safari. This led to the commencement of the instant suit by Plaintiff.

DEFENDANT'S CASE

Plaintiff called two witnesses being his wife as PW1 and a surveyor who is alleged to have witnessed some of the payment of the land to the late grantor.

EVIDENCE OF PW1:

PW1 added that she and her husband plaintiff finished paying for the land but the late grantor refused to give them receipt of purchase nor entered into a lease agreement with them that is herself and her husband Plaintiff. PW1 claims the late grantor told them that his son one Mensah had taken the land document so his brother one Ago should rather prepare the receipt for them. PW1 contends that Ago's persistent refusal to issue them the receipt for the purchase of the land led to a meeting which was called by Ago and some elders identified in para. 9 of PW1'S witness statement.

PW1 further stated that at the meeting the Family of the late grantor agreed to refund the purchase price to them. However, after waiting for long without receiving the refund nor receipt for the purchase, she reported the matter to the police to compel Ago release the document and subsequently filed a claim in this Court. Unfortunately, the action was struck out on grounds of capacity hence the instant action by her husband who paid the numerous sums to the late grantor.

PW2

This witness described himself as one Thomas Adjetey Adjei a draftsman and surveyor by profession.

He testified that in the line of his duty as a professional surveyor, the plaintiff called him that he was buying a land and that the grantor has asked him to look for a surveyor. PW2 said he accompanied the plaintiff to the grantor and during the meeting he asked the grantor for the indenture covering the land and the same was shown to him for inspection. Subsequent to the meeting it was agreed that he should pick up the indenture the following day and make photocopies and when the final payment was made he can do the plotting.

According to PW2 he went the following day to collect the indenture for copies, but he was told by the grantor that his son Mensah had taken the indenture so he did not get the indenture. PW2 further claims the balance of the final payment the sum of ghc1000 was paid after one week to the late Safari which he witnessed and so the same day after the payment of the final balance, he went to inspect the land and drew a sketch which he tendered as exhibit 'B' and later picked the coordinates.

Finally, PW2 alleges that he later prepared the site plan for the plaintiff after he was paid in 2013. The site plan was tendered and admitted as Exhibit "c".

Defendant

On his Part defendant did not call any witness. He testified as a substituted and customary successor to the landlord of the plaintiffs. In his capacity as the customary successor to the late Safari also described as the grantor supra. defendant claims during the life time of his late brother Safari, he signed exhibit "A" (The tenancy Agreement" as a witness. He said ten years preceding the demise of the late Safari, he was very much involved in all transactions executed by his late brother Safari.

He contends that at the mediation forum it turned out that the plaintiff and his wife did not pay any money to Mr. Safari for Land. That his late brother who was present also denied any payment of money to him by the Plaintiff and his wife so the family concluded that no such payment had been made.

That it was after the mediation that the wife of plaintiff sued the Defendant in this same Court but since the case was thrown out for lack of capacity the plaintiff has sued personally this time with the reliefs endorsed on the writ.

Defendant position is that the plaintiff is not entitled to his reliefs. Defendant further counter-claims for the reliefs as stated above.

ISSUES

Discernable from the facts the issues worthy of resolution are as follows:

- 1. Whether the portion of land was sold to the plaintiff.***
- 2. Whether or not the Defendant can be compelled to issue receipt or lease agreement covering the purported sale of land to the plaintiff***
- 3. Whether the defendants can recover possession of the land from plaintiff***
- 4. Whether defendants are entitled to the rent in arrears and interest***
- 5. Whether a declaration of title can be made in the plaintiff's favour.***

The facts giving rise to these actions which were not in much disputes are as follows:

- *That between 2009-2011 the plaintiffs were tenants to the late Safari*
- *That defendant witnessed the tenancy agreement executed between the plaintiff and the late Safari*
- *That there are other 3 persons who also own containers on the Land and do not pay rent to the plaintiff.*
- *It is also indisputable that since the expiration of the plaintiff's tenancy he has not paid any rent to the defendant*
- *Both parties agree that a meeting was held concerning the issue and that meeting was attended by the grantor ie. Safari.*
- *Again it is not in denial that the matter was reported to the police by plaintiff's wife PW2 who again subsequently brought an action to Court but the case was thrown out for lack of capacity.*

- No evidence was adduce regarding attempt by defendant family to recover rent or the land from the plaintiff.
- That the plaintiff remains in possession of the land.

Facts in dispute.

- Whiles the plaintiff claims he purchased the land for e fee of ghc4,500.00 the defendant denies the claim and holds that the plaintiff is a tenant to his late brother for which his tenancy had expired.
- Also whiles the plaintiff claims he submitted one receipt at the mediation forum for which the grantor's family agreed to refund the purchase price to him, the defendant on his part claims the plaintiff could not produce any receipt of payment so the family concluded that no such sale was made to plaintiff.

Analysis

It follows the normal rule of evidence that it is only credible evidence which the court is entitled to rely upon. The rule of evidence regarding civil trial is that it is the party who alleges that must prove. This is to say that the plaintiff who alleges the portion of land was sold to him must establish on a preponderance of possibility that the portion of land in question was truly sold to him and his wife. Section 12(2) of NRCD323 "Preponderance of probabilities" 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. In Dzaisu& others v, Ghana Breweries Ltd [2007-2008]SCGLR 539. In that case, it was argued that since the plaintiffs averred that the defendant employed two streams of workers categorized as regular or permanent workers both of whom did the same jobs and performed the same duties as the plaintiffs, the burden was on plaintiff to have proved that the plaintiffs did the same job as that of those categorized as regular as permanent staff. The plaintiffs merely asserted that averment as made in their pleadings without adducing evidence in support thereof. The Supreme Court held that the plaintiffs failed under NRCD323,S.14

to discharge the onus of proof on them. Also in the case of in Klah vrs Phoenix Insurance Co. Ltd. [2012] 2 SCGLR 1139, the court repeated what amounts to proof in law as stated in Majolagbe vrs Larbi [1959] GLR 190 that: "Where a party makes an averment capable of proof in some positive way, e.g. by producing documents, description of things, reference to other facts, instances and his averment is denied, he does not prove it by merely going into the witness box and repeating that averment on oath or having it repeated on oath by his witness. He proves it by producing other evidence of facts and circumstances from which the court can be satisfied that what he avers is true". Also, by the provision of section 11(1) of NRCD 323, the party who will lose the case or claim in the absence of such evidence bears the burden of proof or of producing evidence.

Since the allegations of fact pleaded in support of plaintiff's reliefs were all stoutly denied, the onus of proof of title was squarely on the plaintiff. This is so in every civil case where the averments are denied. This position has been settled by law and in numerous judicial decisions. In BANK OF WEST AFRICA LTD V ACKON [1963] 1GLR176SC, ABABIO V, AKANSI [1994-95] GBR PART11 74 and DUAH V. YORKWA [1993-94]1GLR 217CA. Indeed, the plaintiff apart from pleading his root of title, mode of acquisition and overt acts of membership, if any, must prove that he is entitled to declaration sought.

Also in the case of YAW KWESI V. ARHIN DAVIS&OR[2007-2008] SCGLR 580, IT WAS HELD THAT, " Since the plaintiff- appellant sued not only for declaration of title but also damages for trespass and order for perpetual injunction, he assumes the onerous burden of proof of title to the disputed land by the preponderance of the probabilities as required by section 11(1) and (4) and (12) of the evidence Act NRCD 325 of 1975.

Before the merits of the case are dealt with, it is necessary to dispose of an important legal and procedural matter which is that this Action is not affected by the new Land

Act as the Action commenced before the coming into force of the new Land Act, being a statute the rule is that it cannot apply to this case retrospectively. I shall therefore invoke provisions of the Conveyancing Act, 1973(Act 175) to determine the issues before me.

1. Whether the portion of land was sold to the plaintiff.

According to the learned Jurist Dennis Dominic Adjei JA in his book LAND LAW, PRACTICE AND CONVEYANCING IN GHANA 2ND EDITION, pg 68. There are several models of land sale. This include sale through Batter, Outright payment, instalment payment or sale by auction. The general position of conveyancing is that land transactions may be made in exchange of money, securities or any form of consideration or a combination of any of them. Barter trade is another recognized form of trade where a person exchanges a property or any other thing which is of valuable consideration to a vendor in exchange for a Land or interest in Land. The sale will be considered valid as the parties may state the value of the property. The parties must state the property that was used as barter and if possible its value and shall appear in the receipt clause. Plaintiff stated that apart from the money they paid to the grantor the grantor also collected items from the plaintiff's shop as part of the purchase money for the land. Unfortunately, the plaintiff has nothing to show about the transaction and therefore that assertion shall fail.

Until the enactment of the new Land Act, 2020 (Act1036) sale of land in Ghana was regulated by the Conveyancing Act, (1975) and it shall be evidence in writing unless exempted by law under s.3 of the Act. S. (1) "A transfer of an interest in land shall be by writing signed by the person making the transfer or by his agent duly authorized in writing, unless relieved against the need for such a writing by provisions of section3."

S. (2) No contract for the transfer of an interest in land shall be enforceable unless-

- (a) *it is evidence in writing signed by the person against whom the contract is to be proved or by a person who was authorized to sign on behalf of the such person: or*
- (b) *it is relieved against the need for such a writing by provisions of section3.*
- (c) *The effect of the above provision is that unless exempt under s.3 of the Act, a transfer of an interest in Land orally made and which does not come under the exemptions in s.1(1) of the Act, shall not confer interest on the transferee. It again means that an Agent who purports to act on behalf of the transferor without a written authorization from the transferor cannot confer an interest in the transferee.*

Again, under the informal approach with the exception of customary sale, which is excuse from writing, under the informal approach, the sale must still be documented though not in strict contractual terms. Further, the law recognizes the following as good title.

s.64. (1) Good title is derived from:

- (a) an enactment;*
- (b) a grant, vesting order or conveyance from the State;*
- (c) a final judgment of a court of competent jurisdiction; or*
- (d) a grant, an acquisition under customary law, conveyance, assignment or mortgage which is at least thirty years old*

and establishes that a person is entitled to convey an interest in the land. In the case of ADJABENG vs. KWABLA [1960] DLHC38, the Court held that "by customary law a person is entitled to alienate his self-acquired property by way of sale or gift without the necessity of members of his family concurring in it. It is otherwise if the property be family property. For the protection of purchasers, a purchaser or donee who acquires property from an individual owner, himself may require members of his said vendor's or donor's family to witness the alienation by the vendor or donor to him to ensure

that he was not acquiring something which is family property, but he is not obliged to require such attestation. All that customary law requires (to make an alienation of self-acquired property valid) is publicity. In this case the plaintiff and members of his family proved that the plaintiff's father sufficiently published to members of his family and other persons that he had alienated this land; and not a single one of them raised any objection to the sale. That being the case the submission that the sale was invalid is not maintainable."

Evaluation:

During the course of his evidence the plaintiff testified that between 2009-2011 they were tenants which the defendant does not dispute since defendant personally witnessed the tenancy agreement. The plaintiff further testified that it was after the expiration of the tenancy agreement that the Land Lord opted to sell the portion of land on which their container is situate together with the portion on which three other containers are situate at a purchase price of Ghc4,500.00. Plaintiff does not deny the assertion that the defendant who witnessed the tenancy agreement did not witness the sale transaction. The question is apart from the plaintiff and his witnesses who from the defendant side witness the payment of money by the plaintiff to the grantor. In any case since the plaintiff was in anticipation of a receipt it goes without saying that the transaction is not a customary transaction which is exempt from writing.

Admitted the plaintiff's story is true there is ample evidence that in all the transactions no family of the deceased grantor witnessed the sale nor the payment of the money. The old judicial decisions which were to the effect that the non-performance of Guaha and other customary rituals would invalidate a valid sale agreement have been overtaken by events and do not represent the present position of the Law. The 1974 case of Ankrah v, Ofori and others supra has correctly stated the modern position that the non-performance of Guaha should not invalidate a sale where the purchaser has satisfied the most important condition of sale, that is possession. The learned Jurist in his book 'LAND LAW PRACTICE AND CONVEYANCING IN

GHANA' supra pg 62 states that possession itself constitute publicity and the non-performance of Guaha whose main essence is to publicize the sale should not be allowed by the Courts to invalidate a valid customary sale. As pointed out earlier, the plaintiff cannot succeed unless he is able to show by positive evidence of sale of the land in question to him and two of such positive evidence in the absence of documentation are publicity and possession. Far from establishing, publicity the plaintiff till date has possession and there is no evidence that of steps taken by the defendant to recover possession from the plaintiff. It was the plaintiff's wife Pw2 who rather initiated an action to enforce the sale but failed for want of capacity. I believe the plaintiff's story that some amount of money was paid to the late grantor and predecessor of the defendant that was why PW2 commenced an action against the defendant to seek justice. What this Court is unable to determine is how much was paid to the grantor.

Ownership of land entails possession of said land and title to it. The party who claims ownership of Land must show possession and title to said land. The evidence presented in favour of the plaintiff's case is as follows:

Plaintiff and PW2 testified that they made three instalments for the land and were issued receipt but failed to produce any receipt either to Court or at the mediation forum. Plaintiff further failed to show receipt of the credited items which was exchanged or bartered as part payment of the purchased land. It is true the plaintiff and his wife have possession that possession flows from their initial capacity as tenants. There is no proof of the conversion of status. As indicated earlier the Court can only sanction credible evidence. Since transaction was an outright sale then writing cannot be excused. S. (1) of Act ---- "A transfer of an interest in land shall be by writing signed by the person making the transfer or by his agent duly authorized in writing, unless relieved against the need for such a writing by provisions of section3."

S. (2) No contract for the transfer of an interest in land shall be enforceable unless-

(a) it is evidence in writing signed by the person against whom the contract is to be proved or by a person who was authorized to sign on behalf of the such person: or

(b) it is relieved against the need for such a writing by provisions of section3.

(c) The effect of the above provision is that unless exempt under s.3 of the Act, a transfer of an interest in Land orally made and which does not come under the exemptions in s.1(1) of the Act, shall not confer interest on the transferee.

The effect of the above rule to the case at bar is that the transaction under review is not one considered to be exempt under s.3 of the (Act 175) 1973 it therefore presupposes that once there ones there is no documentation or writing in support of the sale it shall not confer any interest on the transferee.

The conclusion of issue 1&2 is that this Court has no prove os sale of land to the plaintiff and therefore defendant cannot be compelled to issue receipt to a transaction that is technically invalid.

1. Whether the defendants can recover possession of the land from plaintiff.

Regarding this issue, I hold that the defendant is entitled to recover possession. This flows from the conclusion of issue one. The court having concluded that the plaintiff and his wife are on the land as tenant cannot deny the defendant the right to recover possession. I therefore conclude that the defendant can recover possession of the land subject to 6months rent free notice since the land was given for commercial purpose.

2. Whether defendants are entitled to the rent in arrears and interest.

As earlier disused I believe the plaintiff story that he paid monies to the defendant's predecessor and grantor. However, for want of proof of receipts I shall convert whatever money paid to the grantor as rent in advance which same shall count as rent till date of judgment. I shall grant the plaintiff additional six

months' rent free to allow them to look for alternative land to operate their business or atone tenancy with the defendant.

3. *Whether a declaration of title can be made in the plaintiff's favour.*

The above relief shall fail. With the simple reason that plaintiff has failed to proof that he purchased the land and as such declaration of title cannot be made in his \ favour.

No order as to cost.

(SGD)

H/W PRISCILLA SOPHIA YEBOAH

DISTRICT MAGISTRATE

14/02/2023