

**IN THE DISTRICT COURT HELD AT AVE-DAKPA ON
TUESDAY THE 19TH DAY OF DECEMBER, 2023 BEFORE HIS
WORSHIP AKOSAH AGYARE - AMOANPONG YAW - THE
DISTRICT MAGISTRATE**

SUIT NO: A1/02/2021

GLADYS DOTSEY

PLAINTIFF

VRS:

ADZO DORKE

DEFENDANT

J U D G M E N T

The following constitute the reliefs sought by the Plaintiff in this suit.

1. A declaration that the land, the subject-matter of this suit situate at Metsrikasa, and with the boundaries as described below, belongs to the plaintiff's late mother, Faustine Amevadzi:
 - on one side by the property of Yao Gbogbo;
 - on one side by the property of Kuma Bebefu;
 - on yet another side by the property of Kuma Bebefu;
 - and on the last side by the property of Torgbiga Danyo.
2. A declaration by the court that the Defendant's action is unlawful, and that she has no right to build on the Plaintiff's mother's land, without the Plaintiff's express consent.
3. Recovery of possession of the land in dispute.
4. Perpetual injunction restraining the Defendant and all those who claim through her from trespassing onto the said land again.
5. Costs

On her part, the Defendant counterclaimed for the following reliefs.

- (a) A declaration that the Defendant has the right to put up a building on the disputed land since same belongs to the Defendant's Danyo Family of Kpodzi, near Metsrikasa.
- (b) A declaration that the building situate on the disputed land belonging to Faustine Amevadzi is an inheritance for all the surviving children of Amevadzi, which children include Yaxawo Dotse (the Defendant's mother), and the Plaintiff herein.

The Plaintiff's case, as captured in her witness statement filed on 20th April, 2021, as well as the witness statement of her sister Mamavi Dotsey who was the Plaintiff's sole witness, is that the land in dispute forms an integral part of a large tract of land "founded" by one Torgbuiga Danyo, a great grandfather of the Plaintiff. According to the Plaintiff, she and her siblings used to live with their parents at Agormanya, but that upon the demise of their father, the mother and the children relocated to Metsrikasa where one Korku Dorke (who was the then head of family, and a cousin to the Plaintiff's mother) "graciously agreed and gave" a plot of land to the Plaintiff's mother to settle on.

The Plaintiff continued that her mother presented customary drinks to the then head of family by way of acceptance of the then gift. According to the Plaintiff, her mother put up a building on that land, and cultivated cassava and vegetables on a portion of the land. That the Plaintiff subsequently approached the head of family to ask him for a permission for the Plaintiff too to build on a portion of the land which had been gifted to her mother, which permission, according to the Plaintiff, was granted her, and for which she presented two bottles of "Akpeteshie" to the head of family.

The Plaintiff averred that she later on put up a mud house made up of a chamber and a hall, with a bathroom, on a portion of the said land.

That Yaxawo Dotsey, the Defendant's mother (who doubles as the Plaintiff's sister) was subsequently allowed by the mother to settle on the portion of land where the mother used for her farming activities. And on 11th January, 2021, the Defendant allegedly pulled down the Plaintiff's structure which was being used as "bathroom", and started putting up a building thereon.

The Defendant's case, deducible from her witness statement filed on 27th April, 2021, was that the Plaintiff is a younger sister of the Defendant's mother. That Faustine Amevadzi (the late mother of the Plaintiff, and who is the Defendant's grandmother) was a member of the Dorke Family matrilineally. Hence Amevadzi was allowed to put up a building on a portion of the Dorke Family land, being a large tract of land, which was allegedly gifted to one Torgbui Danyo Amega Dey/the Eklo Family.

That the original donee, Torgbui Danyo Amega Dey gave birth to a female child by name Dorke. That Amevadzi in turn gave birth to Faustine Amevadzi (the Plaintiff's mother) who also gave birth to the Plaintiff herein and her sister Yaxawo Dotsey (the Defendant's mother). And on the part of Dorke (the son of Torgbui Danyo Amega Dey), he gave birth to one Korku Dorke, and Korku Dorke in turn gave birth to Yao Dorke (the father of the Defendant, and Stephen Dorke). Stephen Dorke describes himself as the current head of the Danyo Family.

The Defendant averred that she started the construction of a building on the Danyo Family land, but that the Plaintiff had vehemently resisted the Defendant's

construction work, on the ground that the said portion of the land belongs to the Plaintiff's late mother Faustine Amevadzi.

There are two main issues in controversy to be resolved as far as this case is concerned, and those issues are as listed below.

- (i) Whether or not the Plaintiff is more entitled to the enjoyment of the portion of the land in dispute than the Defendant, or vice versa.
- (ii) Whether or not either of the parties is entitled to be granted the reliefs each of them has sought for.

We shall commence the discussion of our first issue by stating that both parties agree that the land in dispute is a family property. However, the Plaintiff holds the view that the said land had been granted to her mother Amevadzi Faustine before the latter's demise. Hence the Plaintiff and her siblings are entitled to inherit same as of right. On the other hand, the Defendant is of the view that the Plaintiff's mother was only permitted to put up her house on a portion of the Danyo Family's land, and that the Plaintiff and her siblings (including the Defendant's mother) are not entitled to inherit or even enjoy that piece of land as of right.

The question, therefore, arises as to what is a family, in the Ewe customary law? The eminent jurist Kludze, at page 91 of the second edition of his book **Ewe Law of Property**, defined the concept thus:

“The Ewe family consists of that unit of persons, both male and female, who, in the contemplation of the law, are lineally descended from a common male ancestor, generally but not exclusively through males, and which unit is identifiable as a legal entity by the conferment and imposition thereon of certain rights, privileges and obligations, including the determination of citizenship and political allegiance and succession to rights in property

and hereditary offices exclusively to or vested in the unit. Where the descent is not directly through a male member by birth, it must be referable to a person, usually a mother, who is of such a male line of descent by birth”.

See the case of AMPONSAH V. BUDU [1989-90] 2 GLR 291.

Again, at page 85 of the same second edition of **Ewe Law of Property**, the author wrote that the Ewe are patrilineal, in the senses of both patri - descent and patri-succession. That this implied that a person belongs to his father’s family, and that the Ewe family is in principle traced through the male line. That the corollary or effect is that an Ewe man or woman does not belong to his or her mother’s family, either for the determination of his or her citizenship and nationality, or for the purposes of succession to hereditary offices or rights to property.

In the present case, the evidence is not in doubt to the fact that the Defendant is a member of the Danyo Family through her father Yao Dorke. The Defendant’s brother Stephen Dorke (DW1), stated at paragraph 1 of his witness statement filed on 27th April, 2021, that he is the current head of the Danyo Family whose family property the land in dispute forms an integral part. And if the postulation of Kludze, at pages 91 and 85 of the second edition of his book **Ewe Law of Property** is generally accepted as an ideal definition of the Ewe family, then we dare say that the Plaintiff is rather a member of the family of her late father Raphael Dotsey.

It was the Plaintiff’s grandmother Amevadzi who was directly a member of the Danyo Family by virtue of being a daughter of Torgbui Danyo.

As regards the enjoyment of family property by a family member, Kludze has posited, at page 330 of the second edition of his book **Ewe Law of Property**, that

the primary interest which an individual has in the land of his family is that he has an inherent right to occupy and use such land, provided that it is not already occupied by another family member. Once in occupation of a particular portion of the family land, a family member can remain in such occupation for life, on account of the fact that such an interest is indeterminable, not even by the family.

Thus, it is the considered view of this court that, on the strength of the evidence before the court, and having regard to the court's learning of the nature, incidence and rights of the Ewe family as per the passages and references made from the second edition of Kludze's **Ewe Law of Property**, the Defendant in this matter is much better qualified to enjoy the land in dispute (which land is almost a piece of vacant land, with only a structure erected by the Plaintiff on a portion of the land as a bathroom) by virtue of the fact that the Defendant is a direct member of the Danyo Family patrilineally, as opposed to the Plaintiff whose claim to the land is through her mother who was only permitted by the Danyo Family to put up a building on a portion of the Danyo Family's land.

We shall state our findings of fact as below.

1. The Plaintiff is a direct younger sister of the Defendant's mother Yaxawo Dotsey.
2. The land in dispute forms an integral part of the family land of the Danyo Family, which land was originally gifted to Torgbiga Danyo (the Plaintiff's maternal great grandfather, and who could be described as both a late paternal great, great grandfather, and a maternal great, great grandfather of the Defendant).
3. The Plaintiff's late maternal grandmother in the person of Amevadzi was a daughter of Torgbuiga Danyo. Hence Amevadzi was a direct member of the Danyo Family, and could thus enjoy a portion of the Danyo Family's property.

However, both the Plaintiff and her late mother Faustine Amevadzi did not have any automatic right to enjoy the family property of the Danyo Family as the two of them did not partrilineally hail from the Danyo Family.

4. On the other hand, the Defendant is qualified to enjoy the family property of the Danyo Family as she is a member of the Danyo Family partrilineally.

May we now shift our discussion to the second issue, which is whether or not the Plaintiff is entitled to her reliefs, or that the Defendant is entitled to her counterclaims. It must be placed on record that the Plaintiff's late mother, Faustine Amevadzi did put up a building on a portion of the Danyo Family's land, and lived in same before her demise. That house still stands erected on the said land. What is currently in issue is a portion of the Danyo Family land abutting the Plaintiff's late mother's house, which portion of land the Plaintiff is laying claim to in the present action.

It has been stated that among the Ewe, the general rule is that succession to interests in property is patrilineal. That in respect of ancestral family property, the inherent right to the occupation and use of such property is derived from membership of the family, through one's father. Please see the page 330 of the second edition of **Ewe Law of Property**.

In the decided case of GOLO III V. DOH AND OTHERS [1966] GLR 447 – 448, it was written thus;

“Children, sons and daughters, inherit their fathers as of right, but the daughters have only life interest in the property descended to them from their father...”.

This court is of the view that it can apply the above reasoning from the reported case of GOLO III V. DOH AND OTHERS [1966] GLR 447-448 to the facts of the present case, to hold that the Plaintiff not having descended patrilineally from the Danyo Family, she and her siblings cannot inherit any portion of the Danyo Family's land, not even from their mother Faustine Amevadzi. In the circumstance, all the Plaintiff's reliefs are dismissed.

As regards the Defendant's reliefs sought in her counterclaim, the court hereby declares that the Defendant is entitled as of right, in her capacity as a member of the Danyo Family, to put up her building at the area of the family's land which is the subject-matter of the instant suit, as described by the Plaintiff in the latter's writ of summons. Judgment is accordingly entered in favour of the Defendant for her first relief. The court would refrain from making any pronouncement in respect of the building of Faustine Amevadzi as there is no evidence on record to indicate whether Letters of Administration had been applied for, and had been granted by any court relative to the said house, subsequent to the demise of Faustine Amevadzi, to clothe any person with a vesting assent to institute a legal action in respect of that building. The Defendant's second relief is thus dismissed.

Since the parties are related maternally, the court would not award any costs against either side. So, there would be no order as to costs.

(SGD)
H/W AKOSAH AGYARE - AMOANPONG YAW
THE DISTRICT MAGISTRATE