

IN THE DISTRICT COURT HELD AT BEREKUM ON THURSDAY THE 6TH DAY
OF APRIL, 2023 BEFORE HIS HONOUR SIMON GAGA SITTING AS
ADDITIONAL MAGISTRATE

SUIT NO. A1/06/2021

HENDY COMPANY LTD PER THE MANAGER
MR. HENRY GYAMFI OF H/NO. B33 BEREKUM
VRS

1. AMMA BIO SUBSTITUTED BY FRANCISCA ANNAN
OF H/NO. UNKNOWN NEW BIADAN-BEREKUM
 2. FUSEINA AHMED OF H/NO. UNKNOWN BEREKUM
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JUDGEMENT

On the 13th August, 2018 the plaintiff company per its manager commenced this action against the 1st and 2nd defendant claiming the following reliefs

(a) Declaration of title and recovery of possession of all that plot No. 14 Block 'A' sector 5 site shown Edged pink 1:2500 Adwame East Berekum which said plot belongs to the plaintiff but the 1st defendant has sold same to the 2nd defendant.

(b) General damages for trespass.

SUBSTITUTION

In the course of the trial of the case, the 1st defendant died and was substituted by Francisca Annan.

PLAINTIFF'S EVIDENCE

One Henry Gyamfi, the Managing Director of the plaintiff company testified for the plaintiff company. The plaintiff is a registered company incorporated under the laws of Ghana. The plaintiff averred that it acquired plot No. 14 Block 'A' sector 5 Adwame East Berekum from the Biadan plot allocation committee on 28th January, 2008 at the cost of GHC6,000.000 (now GHC600.00). The plaintiff company went ahead to procure site plan on the land.

That the plaintiff has been paying all the statutory fees on the land. According to the plaintiff some time ago wanted to alienate the land to a developer which was resisted by the plaintiff. However around August, 2018 the plaintiff detected that the second defendant has started developing the land by putting up a structure on it hence this legal action.

The plaintiff exhibited the following document to prove its case.

- 1- Exhibit 'A' - Certificate to start business.
- 2- Exhibit 'B' – Receipt from plot allocation committee Biadan.
- 3- Exhibit 'C' - Site plan of the plot No. 14 Block 'A' Sector 5.
- 4- Exhibit 'D' - Registration of the plot at the Berekum Municipal Assembly dated 30th November, 2011.
- 5- Exhibit 'E' - Receipt from the administrator of stool lands dated 23rd March, 2011.
- 6- Exhibits 'F to F6 the building of second defendant on the plot.

Plaintiff called 2 witnesses to prove his case.

THE EVIDENCE OF THE DEFENDANTS

The 1st defendant testified on her own behalf and on behalf of the 2nd defendant. According to the 1st defendant she was the owner of plot No. 23 Block 'A' sector 5

Adwame East and she sold same to the 2nd defendant. The plot that she sold to the 2nd defendant is different from the plaintiff's plot No. 14 Block "A" sector 5, Adwame East.

The 1st defendant averred that after she sold the said plot to the 2nd defendant, the 2nd defendant went ahead to obtain site plan on the land. She went ahead to register the land. She applied for a permit to develop the land and after which building permit was issued to her. All these documents were issued to the 2nd defendant by the Berekum Municipal Assembly.

According to the 1st defendant, the second defendant procured all these documents from the Berekum Municipal Assembly before she started developing plot No. 23 Block 'A' sector 5, Adwame East, Berekum. The 1st defendant tendered the following documents to prove her case.

1 – Exhibit 'A' Site plan on plot No. 23 Block A, sector 5.

2 – Exhibit B – Receipt of the registration of the plot.

3 - Exhibit 'C' Receipt of development permit.

4 – Exhibit 'D' Building permit.

5 – Exhibit 'E' Receipt of payment of sanitation.

The 1st defendant called one witness to further prove her case.

ISSUES

Flowing from the above discuss, the following issues were set down for the trial of the case.

1. Whether or not plot No. 14, Block A sector 5 is the same as Plot No. 23 Block 'A' Sector 5 Adwame East, Berekum.
2. Whether or not the disputed plot belongs to the plaintiff or not.

APPLICABLE LAW

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 claims a declaration of title. So the burden of prove and persuasion remain on the plaintiff to prove that on the balance of probabilities that he is entitled to his claim of title.

See:-Tetteh vrs Hayford (2012) 1 SCGLR 417 @ 326.

Ago Sai & others v. Kpobi Tetteh Tsuru III (2010) SCGLR (72) 762

EVALUATION

The evidence on record is that the plaintiff claims that he bought the disputed plot from the Biadan plot Allocation committee in 2008. He described the plot as No. 14 Block 'A' sector 5, Adwame East Berekum. He relied on Exhibit 'B' which is the allocation paper to demonstrate the purchase.

The plaintiff further relied on Exhibit 'C' which the site plan is issued by the Berekum Municipal Assembly and Exhibit 'D' receipt of the registration of the plot at the Berekum municipal Assembly.

The 1st defendant also tendered Exhibit 'A' which is the site plan and described the disputed plot as No. 23 Block A sector 5, Adwame East Berekum Exhibit B, receipt of the registration with the Municipal Assembly, Exhibit 'C' receipt of development permit and Exhibit D, a building permit issued by the Berekum Municipal Assembly issued in the name of the 2nd defendant.

The issue in controversy is who owns the disputed land. In the case of Agyei Osae v Adafio (2007/08) SCGLR 499 Brobbey JSC speaking for the court in holding 3 said as follows:-

"The principle is that in an action for declaration of title to the land, injunction and recovery of possession, the plaintiff must establish by positive evidence the identity and limits of the land he claims".

So how does a party prove the existence of his land? What comes to mind is the site plan of the area and acts of possession with regard to possessory rights, the plaintiff tendered Exhibit F1, - F6 which is the building that, the 2nd defendant is constructing on the land.

With regard to site plan, both parties tendered in evidence their respective site plans with different plot numbers. It is very instructive to note that the plaintiff through his counsel subpoenaed the Town and Country Planning Officer now called physical planning officer of the Berekum Municipal Assembly to testify as court witness.

In his evidence before the court, the officer indicated that per the map of the Adwame East, Berekum, the structure of the 2nd defendant is on plot No. 23 Block 'A' Sector 5. Also Exhibit D of the 2nd defendant which is a building permit was issued by the Berekum Assembly with plot No. 23 Block 'A' sector 5 Adwame East Berekum on it. It was after procuring the building permit that 2nd defendant started building on the land.

Flowing from the above discussions, plot no. 14 Block 'A' sector 5 Adwame East is not the same as plot No. 23 Block 'A' Sector 5 Adwame East and 2nd defendant structure is on plot No. 23 Block 'A' sector 5. Adwame East.

In conclusion therefore, the defendant's case is more probable than that of the plaintiff. I therefore enter Judgment in favour of the defendants. I award cost of GHC5,000.00 against the plaintiff for the defendants. The injunction which this court placed on the and is hereby vacated.

SGD

H/H SIMON GAGA

SITTING AS ADDITIONAL MAGISTRATE

CC:- PARTIES