

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

SUIT NO. A1/24/2019

**OP. KWABENA HINNEH
H/NO. AH. 2, FETENTAA**

PLAINTIFF

VRS:

**1. KWAKU TABIRI OF FETENTAA
2. ABUSUA PANIN KWAME ADDO
OF BEREKUM**

DEFENDANT

J U D G M E N T

On the 5th day of March, 2019 the plaintiff herein commenced this action against the 1st defendant for the following reliefs:-

- (a) Declaration of title and recovery of possession of all that farm land situated and lying at a place commonly known and called Kwadwo Adjeikrom on Berekum stool land bounded by the properties of Kwadwo Adjei (deceased), Kwame Anto (deceased) and Feeder Road which said farm land belong to the plaintiff but the defendant who has no land or farm at the place is laying adverse claim to it by demarcating or carving part of the plaintiff's land destroying the pear trees and two big teak trees the plaintiff has planted on the land.
- (b) General Damages for trespass.

JOINDER:-

After the plaintiff's writ was served on the 1st defendant, one Abusuapain Kwame Addo filed a motion on notice under order 9 of CI 59 to be joined as 2nd defendant to the suit which the court granted.

PLAINTIFF CASE:-

The plaintiff in his evidence in chief before the court is that the disputed land was acquired by his father Kwame Bosor (now deceased). The disputed land is bounded by the properties of Kwadwo Anto (deceased), Kwadwo Agyei (deceased) and feeder road.

According to the plaintiff his father died about 40 years ago and after the death of his father he took possession of the land. He said that he has been working on it without any hindrance until recently when he defendants wanted to lay adverse claim on the land.

The plaintiff further averred that the 1st defendant went to the land to carve part of the land. In the process destroyed the plaintiff's pear trees and two teak trees on the land. According to the plaintiff, when he confronted the 1st defendant of trespassing onto his land, he told the plaintiff that it was the 2nd defendant who asked him to fell the trees.

According to the plaintiff, the 1st and 2nd defendant have never cultivated any portion of the land.

He reported the conduct of the 1st defendant to their head pastor because he and the 1st defendant attend the same church.

The prophetess advised the 1st defendant to apologize to him through another person but the 1st defendant failed to.

He therefore prayed the court to grant his reliefs. The plaintiff called two witnesses to buttress his claims

DEFENDANTS CASE:-

The 2nd defendant testified on his own behalf and on behalf of the 1st defendant. According to the 2nd defendant, the disputed land was acquired in its virgin state by the grandfather Kwabena Adjei (now deceased). Upon his death, their grandmother called Akua Addae (now deceased) took possession of the land.

According to the 2nd defendant the disputed land shares common boundary with the properties of Nana Yaw Amankona (deceased), Nana Ataku (deceased), Nana Oppong Taah Senti II, and Asuo Kyibra.

The 2nd defendant averred that during the life time of their grandmother, the plaintiff cultivated the land and their grandmother summoned him at Fetentaa Palace for trespassing unto her land where the plaintiff was found liable. The plaintiff accepted his liability who told them that he was going to remove all his things from the land.

However, through the intervention of the Queen-mother of Fetentaa, Nana Akosua Faa, their grandmother allowed the plaintiff to let his food crops be on the land till they nature and after harvest, the plaintiff should leave the land.

However, one year after the death of their grandmother, the plaintiff trespassed onto the land again. When they summoned the plaintiff before the chiefs of Fetentaa and Berekum, he failed to honour the invitation. He therefore prayed the court to dismiss the reliefs of the plaintiff.

The 2nd defendant also called two witnesses to buttress his defence.

ISSUES:-

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

1. *Whether or not the disputed land belongs to the plaintiff.*
2. *Whether or not the plaintiff is entitled to damages for trespass.*

For declaration of title to land the onus is on the plaintiff to prove his case. The burden of proof and persuasion remain on the plaintiff to prove that on the balance of probabilities, he is entitled to his claim. This he could do by proving on the balance of probabilities the essentials of his root of title and method of acquisition.

See: Ago Sai & others V. Kpoba Tetteh Tsuru III [2010] SCGLR 762 @ 229

EVALUATION:

The settled evidence on record is that the plaintiff claims the disputed land is situate at a place called Kwadwo Agyeikrom on Berekum stool land. That it was acquired by his father Kwame Bogo (now deceased). Upon his death, the plaintiff took possession of the land for over 40 years now. That he has his foodcrops, pear and two teak trees on the land which the 1st defendant upon the orders of the 2nd defendant carved part of the land which led to the destruction of the pear trees and the two big teak trees the plaintiff has planted on the land. The land is bounded by the parties of Kwame Anto, Kwadwo Adjei and a feeder road. The plaintiff's evidence was corroborated by the evidence of Amankwaa Richard as PW1 and Michael Ofori as PW2.

The evidence of the 2nd defendant was to the effect that the disputed land was acquired by his grandfather and upon his death, their grandmother Akua Addae took possession of same. During the life time of their grandmother, the plaintiff trespassed unto the land and the case ended at the palace of the chief of Fetentaa where the plaintiff was found liable. However the plaintiff was allowed to harvest his crops from the land area they grow.

It is very instructive to note that the evidence of the PW2 is revealing.

PW2 in his evidence averred that he once felled two big trees on the disputed land to make mortar. He was on the land when the 1st defendant come and saw him. However the 1st defendant told him that one of the trees was on his land. So he took GHC100.00 from the PW2 and told PW2 that the other tree is on the land of the plaintiff. According to PW2, he contacted the plaintiff who admitted that portion of the land belongs to him. Plaintiff did not sell the tree to him but took two mortars from PW2.

It is very interesting to note that the defendants failed to cross-examine the PW2 on this material evidence.

From this evidence of PW2, it goes to buttress the position of the plaintiff that indeed the disputed land belongs to the plaintiff that is why the 1st defendant directed the PW2 to see plaintiff who is the owner of that portion of the land.

The plaintiff in his evidence told that court that his father Kwame Bogor acquired the disputed land in its virgin state and upon his death, for over 40 years now, he has been in possession of the disputed land.

The 2nd defendant in his evidence told the court that his grandfather Kwabena Adjei acquired the disputed land and upon his death their grandmother Akua Addae took possession of the land. However after the death of the said Akua Addae, the 2nd defendant failed to tell the court who is in possession of the land.

In my view, the plaintiff was able to proof his root of title and how the land came to his possession.

See the case of *Ago Sai &* others mentioned supra.

Flowing from his analysis, it is more probable that the disputed land belongs to the plaintiff. I therefore grant relief A.

On relief (b), since the defendants could not cross examine the plaintiff on i.e two big teak trees and the pear trees he claimed the 1st defendant caused damage to, I award GHC3,000.00 as damages to the plaintiff.

I also award cost of GHC2,000.00 against the defendant.

SGD.

H/H SIMON GAGA ESQ

CIRCUIT JUDGE

SITTING AS ADDITION MAGISTRATE