

IN THE DISTRICT HELD AT BEREKUM ON FRIDAY THE 28TH APRIL, 2023
BEFORE HIS HONOUR SIMON GAGA SITTING AS ADDITIONAL
MAGISTRATE

SUIT NO. A1/28/2018

NANA AMANKONA DIAWUO I

(NKOSOHENE OF KUTRE NO. I) ::: PLAINTIFF

VRS

1. GYAN PETER
2. DEEPER LIFE BIBLE CHURCH

ALL OF KUTRE No. 1 ::: DEFENDANTS

J U D G M E N T

In this suit, the plaintiff claims against the defendant for the following relief.

- a. Declaration of title and recovery of possession of all that parcel of land consisting of Fifteen (15) plots situate at Kutire No. 1 on Berekum Stool lands and bounded by the properties of Roman Catholic Church, Nana Kwame Donkor, river Duegyam and a moter road from Kutire No. 1 to the Government Forest Reserve.*
- b. An order of perpetual injunction restraining the defendant, his agents, assigns, privies, workmen, etc. from dealing with the disputed land mentioned in paragraph 'a' supra.*
- c. General damages for trespass.*

JOINDER

On 11th June, 2018 the defendant through his counsel filed a motion on notice to join the Deeper Life Bible Church, of Kutre No.1 as 2nd defendant. The court on 24th August, 2018 granted the application and the Deeper Life Bible Church was joined as 2nd defendant.

PLAINTIFF'S CASE

The plaintiff in his evidence before the court averred that in or around 1978, his mother gifted a parcel of land to him and he provided the necessary "Asida" in the presence of witnesses to his mother. The land is bounded by the properties of the Catholic Church. Nana Kwame Donkor, River Duegyam and a motor road from Kutre No. 1 to Kutre Government Forest reserve. The land is situate at Kutre No. 1.

Upon the gift, the plaintiff moved into occupation and enjoyed peaceful occupation of same. According to the plaintiff, when the land was caught up with development, the land was demarcated into fifteen (15) building plots by the plot Allocation Committee of Kutre No. 1. As the owner of the land, the committee gave him Six (6) of the plots as his share of the 15 plots, leaving nine (9) plots for the committee. According to the plaintiff, he later bought the nine plots from the committee at the cost of One Thousand Eight Hundred Cedis (C1, 800.00 old currency) He exhibited the receipt as Exhibit 'A' in evidence.

Plaintiff averred that he later sold one of his plots to the 2nd defendant which the church later exchanged with a plot of the 1st defendant situate somewhere.

However, the 1st defendant has left the land he exchanged with the 2nd defendant and has trespassed into other portions of the plaintiff's land. The plaintiff said that he never sold any half plot of his other plots to the 1st

defendant. He averred that recently he needed some money to pay for the registration of his child so he contacted the 1st defendant to look for people to buy some of his plots so that he could payback the (GH¢80.00 he took from the 1st defendant.

According to the plaintiff, the 1st defendant was able to get him a buyer who needed land for poultry farming. Plaintiff claimed he sold part of the land to the said purchaser at the cost of GH¢3,500.00 of which he gave GH¢200.00 to the 1st defendant to use GH¢80.00 as refund of the GH¢80.00 and keep the rest of the money for the facilitation of a buyer.

The plaintiff averred that he never took any GH¢100.00 from the 1st defendant as “drinks” for any half plot. Plaintiff further averred that after demarcation and allocations by the plot Allocation Committee, he caused a surveyor/draftsman to draw up the plan of his land indicating the 15 plots. He tendered in evidence a copy of the plan as Exhibit ‘B’.

According to the plaintiff, on the survey plan, he sold plot No. 7 to the 2nd defendant which is still intact and undeveloped. The 1st defendant’s trespassory act covers plot Nos. 1, 3, 8 and 9. The land the plaintiff sold to the poultry farmer covers plots Nos. 1, 2, 3 and 4.

The plaintiff averred that the 1st defendant is using his position as Assemblyman of the area to appropriate his land. The plaintiff did not call any witness.

THE CASE OF THE 1ST DEFENDANT

The evidence of the 1st defendant is to the effect that in the year 2003, the plaintiff sold one building plot to the 2nd defendant which shares common boundary with the properties of Roman Catholic School, a road to the Government reserve Forest and Kwasi Kyeremeh alias Lawal to the 2nd defendant.

The 2nd defendant bought the land to put up a church but due to the rough nature of the plot, they could not use the land for the church building. So through one Kwakwo Ofori alias Akoko shoe who is an elder of the 2nd defendant church approached the 1st defendant. The 1st defendant exchanged his plot which is at Kyiribaa with that of the 2nd defendant.

After the exchange, the 1st defendant went into occupation at the plot by putting up a structure on it for his poultry farm. He also cultivated mango, orange and cashew nut trees on a portion of the land.

According to the 1st defendant, the plaintiff used to be his bosom friend. In one of the 1st defendant visits to the plaintiff's house, the plaintiff told him that he needed GH150.00 to pay for his children's school fees. That was in 2009. The 1st defendant further averred that the plaintiff told him that he has a half plot by the plot the 2nd defendant exchanged for the 1st defendant plot and that the 1st defendant should provide "drinks" and take. The 1st defendant gave the plaintiff GHC150.00 as "drinks" and took possession of the half plot of land. The 1st defendant spent GHC2,000.00 in grading and levelling the half plot, and after which he fenced the whole land which consist of the exchange land and the half plot.

So in 2016 the Berekum Municipal Assembly started the layout of the township. The 1st defendant plot was demarcated or zoned as plot No. 79 Block 'G' sector 13 Annex, Kutre No. 1 He tendered in evidence the site plant of the land as Exhibit 1. The 1st defendant called one witness to defend his case.

CASE OF THE 2ND DEFENDANT

One Adu Daniel, a pastor of the 2nd defendant testified on behalf of the 2nd defendant. In his evidence, he averred that he was posted to Kutre No. 1 somewhere in 2014. By then there was a structure on a plot he got to know that, that plot belonged to the 1st defendant and that the church had its own which was exchanged with that of the 1st defendant. The 2nd defendant called one witness.

ISSUE

Flowing from the above evidence the following issue was set down for the trial of the case.

“Whether or not the plaintiff is entitled to his reliefs.

APPLICABLE LAW

To succeed in an action from a declaration of title to land, a party must adduce evidence to prove and establish the identity of land in respect of which he claims a declaration of title. So the burden of proof and persuasion remain on the plaintiff to prove on the balance of probabilities that he is entitled to his claim of title.

SEE: TETTEH V HAYFORD (2012) 1 SCGLR 417 (@) 426

Also in the case of **MAJOLABGE V LARBI (1957) GLR (@) 190**, it was held that proof in law is the establishment of facts by proper legal means. Thus where a party makes an averment capable of proof in some positive way, example by

producing document, and he and his witnesses cannot be said to have satisfied the required degree by simply repeating same after undertaking to speak the truth. Thus, what ought to be done is clearly stated in the Supreme Court case of **ACKAH V PERGAH TRANSPORT LTD (2010) SCGLR 731** where it was held that the various methods of producing evidence which include the testimonies of the party and material witnesses without which the party might not succeed to establish the requisite degree of credibility concerning a fact in the mind of the tribunal or court.

EVALUATION

The evidence on record is that somewhere in 1975 the plaintiff mother gifted him a land which he provided on "aseda". Somewhere in 1987 the place was caught up by development. So the plot Allocation committee of Kutre No. 1 demarcated the land into 15 building plots. The plaintiff was given six of the plots and the committee kept of nine of them. According to the plaintiff, the committee sold the said nine plots to him at the cost of GHC3,500.00.

However he sold one of the plots to the 2nd defendant who later exchanged it with the 1st defendant plot. The plaintiff denied ever selling half of his plots at the cost of GHC80.00 to the 1st defendant. It was a loan he took that the 1st defendant which he later paid after the 1st defendant assisted him to get a buyer to buy plot Nos. 1, 2, 3 and 4. That buyer was to operate poultry farmer on the land. Plaintiff claimed he engaged a surveyor who drew up a plan covering the plots. He tendered that site plan in evidence as Exhibit 'B'. And the plot he sold to the 2nd defendant was captured as plot No 7. He further claimed that the 1st defendant has trespassed on plot nos. 1, 3, 8 and 9.

The 1st defendant also denied encroaching upon the plots. He said it was the plaintiff who gave him a half plot which was close to a plot he exchanged with the 2nd defendant. He paid GHC150.00 as "drinks" to the plaintiff. The 1st

defendant claim he has walled the land he exchanged with the 2nd defendant and the half plot that the plaintiff sold to him.

According to the plaintiff he has put up a structure to operate poultry farm on a portion on the land and has also planted mango, orange and cashew trees on a portion of the land. He said that when Berekum Municipality started a layout of the township, it covered his plot and it was numbered 7. He tended the site plain in evidence as Exhibit 1. He called one Osei Tawiah alias Kwame Tawiah as DW1. The 1st defendant Dw1 corroborated the evidence of the 1st defendant.

The evidence of the 2nd defendant indicated that the plaintiff sold a land to the 2nd defendant which the 2nd defendant later exchanged with that of the 1st defendant. The evidence of the 2nd defendant indicated that the plaintiff sold a land to the 2nd defendant which the 2nd defendant later exchanged with that of the 1st defendant.

The plaintiff in his evidence averred that he sold plot Nos. 1, 2, 3 and 4 to a certain poultry farmer. He further stated that the 1st defendant has trespassed on plot nos. 1, 3, 8 and 9. The 1st defendant in his evidence denied the claim on the plaintiff. The burden was therefore on the plaintiff to prove to the court that indeed the 1st defendant has trespassed unto those plots which even includes plots No. 3 that the plaintiff sold to the poultry farmer.

It is very interesting to note that the plaintiff failed to call a single witness to corroborate his evidence that in deed the 1st defendant has trespassed unto those plots mentioned supra.

Also, the plaintiff failed to tell the court the name of that poultry farmer. And also failed to call him as witness in the case. It is trite law that failure to call a material witness is fatal to the parties case.

SEE:-TETTEH V THE REPUBLIC (2001(02) SCGLR HOLDING TWO

Now another question that may be asked is this, did the plaintiff sell a half plot to the 1st defendant and took GH¢150.00 for drinks. The plaintiff claimed that he took GH¢80.00 from the 1st defendant which he paid back after the 1st defendant assisted him in getting someone to buy six of the plots. However the 1st defendant denied his claim and said that the plaintiff took GH150.00 from him to pay for his children school fees. As a result the plaintiff gave out half plot to the 1st defendant. This position of the 1st defendant was corroborated by 1st defendant Dw1. The plaintiff could not produce a witness to admit or deny the claim by the 1st defendant. Also, plaintiff attached Exhibit 'B' to prove his case that he has 15 plots which includes that of the 1st defendant. The 1st defendant also tendered exhibit '1' to show the size of his plot. The plaintiff described the 1st defendant plot as No. 7. However, the 1st defendant described his plot which includes the half plot as plot No. 79 Block 'E' sector 13 annex Kutre No. 1.

For the court to throw the authenticity of Exhibit 'B' this is what ensued between the pit and counsel for the 1st defendant.

Q. Look at exhibit 'B' which is the site plan, it has not been signed.

b. the regional surveyor.

A. It has not been signed.

Q Exhibit 'B' has not been signed by the Town and Country Planning

Officer.

- A. that is not correct.
- Q. I put it to you that Exhibit 'B' is a self-serving document.
- A. It was prepared by a surveyor.
- Q. Who is that surveyor?
- A. He is called Nana Amosah.
- Q. Where does the surveyor work?
- A. He works at Berekum.
- Q. is his office under Town and Country office, Berekum.
- A. I cannot tell.

A closer look at Exhibit 'B' does not show the signature of the said Nana Amosah with his licence number as a surveyor. The regional surveyor nor the Town and Country Officer in Berekum has also not signed the site plan.

However, Exhibit 1 which is the site plan of the 1st defendant on the disputed land was signed by the Town and country planning Officer, Berekum.

For a party to prove the existence of his land, what comes to mind is the site plan of the area and acts of possession. In respect of possessory right the 1st defendant was able to lead evidence that he has a structure on the land for his poultry farm, has planted mango, orange and cashew trees on the land which he has gone ahead to fence with a wall. During cross-examination of the 1st defendant the plaintiff failed to challenge the possessory rights of the 1st defendant on the disputed land.

With regard to the site plans of both parties, the plaintiff site plan could not identify the identity of the disputed land and its limits. However, the 1st defendant site plan has identified the disputed land and its limits and is also signed by an accredited institution.

See the case of **AGYEI OSAE V. ADJEI FIO (2007/80) SCGLR 499.**

Flowing from the above analysis, the plaintiff failed to proof his case on the balance of probabilities that the 1st defendant has trespassed unto his plots. The claim of the plaintiff is accordingly dismissed.

I award cost of GH8000.00 against the plaintiff for the 1st defendant.

SGD

H/H SIMON GAGA

CIRCUIT JUDGE SITTING

AS ADDITIONAL MAGISTRATE

PARTIES:- PRESENT

