

IN THE DISTRICT COURT HELD AT BEREKUM ON TUESDAY THE 4TH DAY
OF APRIL 2023 BEFORE HIS WORSHIP AUGUSTINE AKUSA-AM DISTRICT
MAGISTRATE

SUIT NO. A2/35/2022

ELDER ATTA JOHN

VRS:

AGNES POKU

JUDGEMENT:-

The plaintiff caused to be issued a writ of summons against the defendant claiming the following reliefs:-

1. *Recovery of an amount of Three Thousand Ghana Cedis being the cost of half building plot the defendant bought from the plaintiff in 2019 which is situate at Domfete but the defendant had since failed to pay the above stated sum to the plaintiff.*
2. *Costs.*

The defendant resisted the claim by contending that she never negotiated with the plaintiff for any parcel of land. That she acquired her land from one Charles Darko (who testified as DW1) for valuable consideration.

The plaintiff's case is that he owns a parcel of land at Domfete a suburb of Berekum. That he received a call from one Esther Konama to come over to the land because someone was using a bulldozer to clear the land for development. When he got to the land, he saw the defendant, a surveyor and Esther Konama. Esther then asked the defendant if she was interested in the land. Defendant responded in the affirmative and promised to pay each of them GHC3,000.00.

According to the plaintiff, the defendant had paid GHC3,000.00 to the said Esther Konama but has deliberately refused to pay him his share hence the instant action to recover the promised amount of GHC3,000.00.

Esther Konama who testified for the plaintiff averred that she shares boundary with the plaintiff's land at Domfete. She stated that she once visited her land and noticed that defendant had used an earth-moving machine to clear a portion of her cocoa farm and that of the plaintiff. They subsequently conducted an investigation and found out that it was the defendant that had commenced some development on the land. The defendant was invited and she told them that she purchased the land from Charles Darko but she (defendant) was told that the land did not belong to Charles.

Following this revelation, the defendant promised to pay her and plaintiff an amount of GHC3,000.00 each to avoid litigation. Witness said she subsequently received an amount of GHC3,000.00 from the defendant but the plaintiff was denied his share hence the instant action.

The defendant on her part, contends that she bought the subject matter of the instant action from one Charles Darko (DW1) for valuable consideration. She explained that she bought the property in the name of her husband by name Augustine Oppong who lives in Spain. As a result, all the documents on the land bear her husband's name.

The defendant tendered the following documents to corroborate her evidence.

(a) An allocation paper from the Domfete stool,

(b) A site plan

(c) A deed of transfer executed by her vendor (Charles Darko)

(d) A Power of Attorney donated by the chiefs and elders of Domfete to Charles Darko (DW1) to act on their behalf.

Defendant denied the assertions by the plaintiff that she negotiated and bought the land in issue from him (plaintiff). The only witness for defendant was Charles Darko who conveyed the land to her.

Witness explained that the land sold to the defendant was a family land and the family is currently headed by the Krontihene of Domfete by name Nana Kyere Diabour. He averred that the Head of Family and elders authorised him to alienate the land to the defendant so they could use the proceeds to solve some family problems. He tendered the power of Attorney given him by the occupant and principal members of Domfete stool.

Witness disclosed that the plaintiff is his maternal grandson. This means the plaintiff is a member of their family.

According to the witness, the plaintiff does not own the land sold to the defendant and prayed the court to dismiss the suit.

After carefully examining the facts and evidence on the record, I am of the considered opinion that two issues call for determination.

1. Whether or not the plaintiff sold any land to the defendant.

2. Whether or not the defendant owes the plaintiff an amount of GHC3,000.00.

Before I deal with these issues for determination, I will briefly touch on the burden of proof. In civil cases, the general rule is that, the one who in his pleadings or writ raises issues essential to the success of his case, assumes the onus of proof; See ***BANK OF WEST AFRICA LTD V. ACKUN (1963) GLR 176***. The civil onus is on the balance of probabilities; See Section 12 of the Evidence ***ACT, 1975 [ACT 323]***. Therefore, in the instant case, the burden lies on the plaintiff to adduce sufficient credible evidence to convince the court that he owned the disputed land and sold same to the defendant at the cost of GHC3,000.00 and that the defendant has failed to pay him.

What evidence did the plaintiff adduce to prove his claim? The plaintiff testified on oath that his witness PW1 (Esther Konama) in 2019 approached him and enquired if he was the one who had destroyed part of her cocoa farm. He denied knowledge of any destruction and therefore went onto the land and met PW1, the defendant and a surveyor. PW1 then asked the defendant whether she was interested in his land and she answered in the affirmative and agreed to pay him and the PW1 GHC3,000.00 each. Since that promise was made in 2019, the defendant has refused to pay him his share hence, this action.

On the evidence, there is nothing showing that the parties negotiated for the sale of land. In the normal course for the sale of land, the vendor leads the vendee to the land to be sold. The vendee inspects the land and if he is satisfied a price is agreed upon and the land is allocated to the vendee. Depending on the agreement between the

parties. The vendee either makes part payment or full payment and a deed of conveyance, site plan etc is executed by the vendor.

In the instant case this never happened. The plaintiff did not exhibit any document to convince the Court that there had been a transaction between him and the defendant. It is thus provided order Section 1 (1) of the *CONVEYANCING ACT, 1973 (NRCD 175)* that : *“A transfer of an interest in land shall be by writing signed by the person making the transfer or by the agent of that person duly authorised in writing unless relieved against the need for a writing by Section 3”*

In this instant action, it is rather the defendant who exhibited among others, a deed of conveyance (in writing) evidencing the fact that she lawfully purchased the land from one Charles Darko who acted for and on behalf of the Domfete stool.

During trial, I found as a fact that the plaintiff is a close relative of DW1 who granted the land to the defendant. When the plaintiff was given the opportunity to cross-examine DW1, he fumbled and could not pose any relevant questions.

In his evidence, the plaintiff had averred that the defendant had paid an amount of GHC3,000.00 to his witness (Esther-PW1) but had refused to pay his share of GHC3,000.00. The evidence on record however revealed that the defendant rather paid an amount of GHC5,500.00 to her grantor (DW1) and it was DW1 who for reasons best known to him gave an amount of GHC3,000.00 to PW1. The payment of GHC3,000.00 had nothing to do with the defendant. It is instructive to state that DW1 never received any money directly from defendant.

In conclusion, I am of the considered opinion that the plaintiff could not establish his interest in the land sold to the defendant by DW1. Furthermore he could not also convince the court that there had been a contract of sale between him and the

defendant. The plaintiff only met the defendant on the land when she was about to develop same after purchasing it from DW1 a year earlier.

For failure to discharge the burden of proof placed on him by law, I cannot find for the plaintiff.

In the result this suit is dismissed as it is vexations, meritless and frivolous. Costs of GHC1,600.00 awarded in favour of the defendant against the plaintiff.

SGD.

H/W AUGUSTINE AKUSA-AM

(MAGISTRATE)

AA.