

IN THE DISTRICT COURT HELD AT BEREKUM ON FRIDAY 3RD DAY OF
MARCH, 2023 BEFORE H/H SIMON GAGA CIRUIT JUDGE SITING AS
ADDITIONAL MAGISTRATE

SUIT NO. A11/25/2019

FRANK AWUAH & ANOTHER
BOTH OF BEREKUM

}
::: PLAINTIFF

VRS:

BERNICE AFIA POMAA OF BEREKUM

}
::: DEFENDANT

J U D G M E N T

In this suit the plaintiffs claim against the defendant for the following reliefs

- 1. A declaration that the unregistered private car (Kia-Sportage) is the bonafide property of the 1st plaintiff as same does not form part of the estate of Emmanuel Awuah Adjei @ Kwabena Awuah.*
- 2. Declaration that the deceased Emmanuel Awuah Adjei @ Kwabena Awuah gifted a chamber and a hall Suntreso-Jinijini to the 2nd plaintiff for her service to the decease at Sefwi-Bogorkrom before his death.*

NOTICE OF DISCONTINUANCE:-

On the 18th of September, 2020 the 2nd plaintiff filed notice of discontinuance of the suit against the defendant with liberty to re-apply. The court granted it accordingly. The 2nd plaintiff ceases to be a party in the suit.

THE CASE OF THE 1ST PLAINTIFF:-

The 1st plaintiff (hereinafter referred to as the plaintiff) in his evidence before the court said that Emmanuel Awuah Adjei (now deceased) was his uncle.

Before his uncle died he promised to buy the plaintiff a car;

According to the plaintiff, during his marriage cerebration, he used a friend's car. (Unregistered Kia Sportage 4x4).

On 31st December, 2017 night, the plaintiff who is a pastor told his congregants that his uncle has intentions of buying him a car so the congregants should assist him to thank his uncle Emmanuel Awuah Agyei. After that the 1st plaintiff prayed for his uncle.

The plaintiff averred that his uncle wanted to buy the Kia Sportage that his friend Amankona Joseph Kelvin gave him for his marriage ceremony. Amankona Kelvin Agyei (PW2) was selling the car at the price of GH38,000.00. Plaintiff said that his uncle paid (GH30,000.00) to the PW2 and it was left with GH¢8,000.00 that was in January 2015. PW2 gave the car to the plaintiff but was keeping the document on the vehicle.

The plaintiff said that when he asked for the remaining amount of GH¢8,000.00 from his uncle, his uncle told him to look for the remaining amount since the car belongs to the plaintiff. The plaintiff looked for some money somewhere and paid the

GH¢8,000.00 to PW2 bringing the total sum of money to GH¢38,000.00 this was in November, 2018. Plaintiff said that after he paid the last tranche of GH¢8,000.00 to PW2, PW2 released the documents on the vehicle to him.

The plaintiff tendered in evidence the payment receipt for the import of the vehicle as exhibit A, the certificate of purchase of the vehicle by the plaintiff as Exhibit B, Custom documents as Exhibit 'C' and a compact disc containing the video of the programme where his uncle made the said promise as exhibit D.

Plaintiff called two witnesses to support his claim.

CASE OF THE DEFENDANT:-

The defendant in her evidence in chief averred that she is the widow of the late Emmanuel Awuah Agyei @ Kwabena Adjei.

The defendant further averred that her late husband was Contesting for the chairmanship position of the Berekum West constituency of the NDC party. As a result he bought the disputed vehicle at the cost of GH¢35,000.00.

According to the defendant, it was the plaintiff who served as personal driver to the late Emmanuel Awuah Adjei throughout the campaign period till Emmanuel Awuah Adjei met his untimely death.

The defendant called three witnesses to buttress her defence.

ISSUES:-

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

1. *Whether or not the writ of summons is competent or not*
2. *Whether or not the unregistered Kia Sportage 4x4 forms part of the estate of the late Emmanuel Awuah Adjei.*

In civil case, the general rule is that the party who alleges carries the burden of proof. This position has been echoed in the celebrated case of *Bank of West Africa Ltd V. Ackum* [1963] 1GLR 176

Also, Section 11(4) of the Evidence Act, 1975 (NRCD 323) provides as follows:-

“In other circumstances the burden of producing evidence requires a party to produce sufficient evidence which in the totality of the evidence leads a reasonable mind to conclude that the existence of the fact was more probable than its non-existence”.

EVALUATION:-

The plaintiff filed a writ of summons against the defendant claiming the reliefs as endorsed on the writ of summons.

The defendant in her defence described the writ as incompetent and same should be struck out.

However, the defendant in her evidence before the court failed to tell the court what constitutes an incompetent writ. Interestingly, counsel for the defendant in

his written address to the court raised issues concerning the incompetence of the writ which are not borne out of the evidence of the defendant. They are diversionary.

Since the argument of counsel is not borne from the evidence of the defence of the defendant, same cannot be entertained by the court

See: *Kunutsor V Tetteh* (160 of 2006) (2008) GHACA 35 (12 June 2008 CA. unreported. As a result of the principle in this case, I dismissed issue one.

ISSUE 2

The plaintiff in his evidence before the court averred that his uncle Emmanuel Awuah Adjei promised to buy a car for the plaintiff. According to the plaintiff, the PW2 brought Kia Sportage 4x4 which the plaintiff uncle paid GHC30,000.00 and the plaintiff also paid GHC8,000.00 bringing the total price of the car to GHC38,000.00. According to the plaintiff, PW2 released all the documents on the vehicle to him and the car was in his possession till after the death of his uncle, the car was preserved by a court order.

He tendered Exhibit A, B, C, & D to show his ownership of the car. The defendant in her evidence vehemently opposed the evidence of the plaintiff. To the defendant, her husband, the late Emmanuel Awuah Adjei never promised anybody that he was going to buy a car for that person.

Her husband bought the car to assist him to campaign for his election as NDC chairman for Berekum West. According to defendant, the plaintiff was his driver to all the places that the husband visited during the campaign with Kwaku Hinneh and Cubaji.

The plaintiff by exhibit "B" which is a certificate of purchase told the court that the cost price of the car is GH¢38,000.00 as against the GH¢35,000.00 that the defendant claimed the late husband bought the car. Exhibit "B" bears the name of the plaintiff as the owner of the disputed car. The defendant could not provide any document to prove that indeed the car belongs to her late husband.

Since the plaintiff has documents on the car, bearing his name there is a presumption that he is the owner of the car

See: Wood (Subst by) Asante-Koranteng V. Tamakloe & Derban (2007/08) 2 SCGLR 852

Also, the statutory presumption of ownership that is conferred on a person in possession avails the plaintiff in this case. The plaintiff in his evidence averred that he has been in possession of the car. This position of the plaintiff was also corroborated by the defendant and DW2 in their evidence Section 48 of the Evidence Act, (NRCD 323) provides that a person who is in possession of a property or exercise acts of ownership over that property is presumed to be the owner of it.

Flowing from the following thereof, the evidence of the plaintiff is more, probable than that of the defendant.

I therefore enter judgment in favour of the plaintiff to the effect that the plaintiff is the owner of the disputed Kia Sportage 4x4.

I award cost of 2,000.00 against the defendant.

SGD.
H/H SIMON GAGA ESQ
CIRCUIT JUDGE
(SITING AS ADDITIONAL MAGISTRATE)

PARTIES – PRESENT.