

IN THE DISTRICT COURT HELD AT BEREKUM ON MONDAY THE 18<sup>TH</sup> DAY  
OF JULY, 2023 BEFORE HIS HONOUR SIMON GAGA SITTING AS  
ADDITIONAL MAGISTRATE

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SUIT NO. A1/12/2021

1. GIFTY AKYAAMAH  
2. EVELYN OPOKU ALL OF C31/3  
NYAMEBEKYERE-BEREKUM

} ..... PLAINTIFFS

VRS

1. KWADWO YEBOAH  
2. AKUA KONADU  
3. STEPHEN EFFAH ASIEDU  
ALL OF BEREKUM

} ..... DEFENDANTS

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J U D G E M E N T

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On the 6<sup>th</sup> day of January, 2021 the plaintiffs caused a writ to be issued against the 1<sup>st</sup> and 2<sup>nd</sup> defendants herein endorsed with the following reliefs

*(a) Declaration of title and recovery of possession of all that residential building plots Nos. 51 and 52. Block "K" situated and lying at Adwame East, Berekum which said building plots are the bonafide properties of the plaintiff's but the defendants have trespassed unto same and re-demarcated the two (2) plots into one (1) plot and have started developing the plots.*

*(b) General damages for trespass*

**APPLICATION FOR INTERLOCUTORY INJUNCTION**

The plaintiffs filed an application for interlocutory injunction together with the writ of summons against the 1<sup>st</sup> and 2<sup>nd</sup> defendants. The court granted the injunction and the plaintiff made an undertaking of GH¢10,000.00 dated 22/01/21 that in an event that the plaintiff lose the case same will be paid to the defendants.

**APPLICATION FOR JOINDER**

One Stephen Effah Asiedu was joined as 3<sup>rd</sup> defendant in the case by the court based on the application moved by Kwadwo Yeboah, the 1<sup>st</sup> defendant.

**PLAINTIFFS CASE**

The 1<sup>st</sup> plaintiff testified for herself and on behalf of the 2<sup>nd</sup> plaintiff. The gist of the plaintiff case is that the disputed plots with Nos. 51 and 52, sector 5 Block 'K' Adwame East, Berekum is a gift to them by their mother and grandfather Kwadwo Fordwo.

According to the 1<sup>st</sup> plaintiff, the disputed plots form part of a vast land acquired by her grandfather Op. Kwadwo Fordjour many years ago for farming activities. She further averred that some time ago one Dr. K .A Adu trespassed unto the land. Her grandfather summoned the said Dr. K.A. Adu before the paramount chief of Berekum. Nana Yiadom Boakye.

After adjudication of the case Dr. Adu was directed to carve five (5) acres of the land to my grandfather.

When the defendants encroached upon the land the 1<sup>st</sup> Defendant said she reported them to Senanse plot allocation committee who said that the disputed land is part of the Dr. Adu's land.

According to her she later reported it to Nana Amankona Diawuo, the Omanhene of Berekum who, after his investigation told the plaintiffs that the land belongs to them. She therefore prayed the court to grant her reliefs as endorsed on the writ of summons. She called one witness to support her case.

### **THE CASE OF THE DEFENDANTS**

The 3<sup>rd</sup> defendant who testified on his own behalf and on behalf of the 1<sup>st</sup> and 2<sup>nd</sup> defendants, vehemently refuted the evidence of the plaintiffs. He averred that the disputed plots Nos. 51 and 52 Block 'K' sector 5 Adwame East Berekum form part of a larger track of farm land acquired by his late grandfather Komfo Bedidee from the Aduane Royal Family of Nsapor.

After the death of his grandfather Komfo Bedidee, he was succeeded by his uncle Kwadwo Fordjour, now deceased, who took possession of the Komfo Bedidee farm land as his customary successor.

According to the 3<sup>rd</sup> defendant, when his uncle Kwadwo Fordjour became old, he handed over the farm land which included the disputed land to him. That he farmed on it for seven years without let or hindrance.

The 3<sup>rd</sup> defendant further stated that he does not know the 2<sup>nd</sup> plaintiff but only the 1<sup>st</sup> plaintiff. He said that the 1<sup>st</sup> plaintiff is not even related of his late uncle Kwadwo Fordjour.

He explained that it was the 1<sup>st</sup> plaintiff's grandmother Akosua Bio who married to the 3<sup>rd</sup> defendant uncle, Kwadwo fordjour. And that before Akosua Bio married to Kwadwo fordjour, she already had a child called Afia Dartey with another man. And that Afia Dartey is the 1<sup>st</sup> plaintiff mother.

The 3<sup>rd</sup> defendant further averred that his uncle Kwadwo Fordjour delegated his sister Akosua Gyabea (deceased) and his grandson Kwadwo Yeboah (deceased) in 1972 who showed her the boundaries of the farm land he succeeded from the late Komfo Bedidee. The land shares boundaries with the properties of Op. Kwadwo Bonsu (deceased) and Adwoa Animah. When he gave birth to a child he name the child after his Uncle Kwadwo Yeboah. As a result, his uncle through his sister Akosua Gyabea told him to sell a portion of the farm land to sponsor that his son in secondary school because of the honour the 3<sup>rd</sup> defendant had done him.

Consequently, I carved the disputed plots and sold to one Ofori Kwaku Kennedy, a brother of the 1<sup>st</sup> and 2<sup>nd</sup> defendants.

According to the 3<sup>rd</sup> defendant he prepared all the necessary documents in respect of the two plots in the name of the said Ofori Kwaku Kennedy. He tendered the following documents in evidence.

1. *certificate of purchase dated 13<sup>th</sup> August, 2008 as Exhibit 1*
2. *Site plain signed by Nana Kyere Yeboah Dartey II Nsaporhene and Benkumhene of the Berekum Traditional area as Exhibit 2.*
3. *Registration of the two plots with Berekum Municipal Assembly as Exhibit 3.*
4. *Receipt on sanitation paid to Berekum Municipal Assembly as Exhibit 4.*
5. *Payments of grants receipts to the Administration of stool lands Berekum as Exhibits 5a, 5b, and 5c.*

He therefore prayed the court to dismiss the reliefs of the plaintiffs. He called one witness to support his defence.

## **ISSUES**

From the above evidence, the following issues were set down for the trial of the case.

1. Whether or not the plaintiffs are relatives of the late Kwadwo Fordjour.
2. Whether or not the defendants have encroached upon the disputed land.

3. Whether or not the disputed plots were gifted to the 1<sup>st</sup> plaintiff and her siblings.

### APPLICABLE LAW

In civil cases, the general law is that the party who alleges carries the burden of proof. This position is echoed IN THE CASE OF bank of West African ltd vrs ACKAN (1963) 1 GLR 176 -182

Added to this, 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 on the totality of the evidence, leads a reasonable mind to conclude that the existence of the fact was more probable than its non-existence"*

Also, section 14 of the evidence Act states as follows:

*"Except as otherwise provided by law, unless it is shifted a party has the burden of persuasion as to each fact the existence or non-existence of which is essential to the claim or defence that party is assenting".*

It is also trite law that in an action for declaration of title the burden is on the plaintiff where there is no counter claim.

See the CASE OF TANO V. ABAN MENSAH (1992/93) GBR CA 308 HOL 3@.

### EVALUATION

To make this judgement logical, I am going to discuss the issues seriatim.

#### ISSUE ONE

THE 1<sup>st</sup> plaintiff in her evidence in chief before the court, traces her root of title to Kwadwo Fordjour. In her evidence she averred that the late Kwadwo Fordjour was her grandfather who acquired a vast track of farm land. When one Dr. K. A. Addai trespassed on same, her late grandfather summoned her before the late Omanhene of

Berekum Nana Yiadom Boakye Owusu II. And that the disputed plots form part of the portion of the land of her grandfather Kwadwo Fordjour.

The 3<sup>rd</sup> defendant in his evidence in chief debunked the claim of the 1<sup>st</sup> plaintiff that the late Kwadwo Fordjour was her grandfather. According to the 3<sup>rd</sup> defendant, the late Kwadwo Fordjour was his uncle. He said that his uncle Kwadwo fordjour married to one Akosua Bio who already had a child called Afia Dartey with another man. And that Afia Dartey is the mother of the 1<sup>st</sup> plaintiff.

By this, the 3<sup>rd</sup> defendant wants to say that the 1<sup>st</sup> plaintiff's mother, Afia Dartey was a step daughter of Kwadwo Fordjour. So the 1<sup>st</sup> plaintiff, who is the daughter of the said Afia Dartey cannot be a granddaughter of the late Kwadwo Fordjour who was the uncle of the 3<sup>rd</sup> plaintiff.

Interestingly, during cross examination of the 3<sup>rd</sup> defendant by the 1<sup>st</sup> plaintiff, the 1<sup>st</sup> plaintiff failed to cross-examine the 3<sup>rd</sup> defendant on that claim. It is trite law that if a party raises a material issue in his evidence and the party fails to cross-examine him on it amounts to admission of that evidence.

See the case of Fori v. Ayirebi (1966) GLR 627 SC

See also the case of Danielli Construction Ltd v. Mabey and Johnson Ltd (2007/08 J 1 SCGLR 60 @ 65.

This court is therefore of the view that the 1<sup>st</sup> plaintiff is not a granddaughter of the late Kwadwo Fordjour since she failed to cross-examine the 3<sup>rd</sup> defendant on same.

## **ISSUE TWO**

The 3<sup>rd</sup> defendant in his evidence averred that his uncle, Kwadwo Fordjour when he grew old, delegated his sister Akosua Gyabea and his grandson Kwadwo Yeboah to

show and put him (3<sup>rd</sup> defendant) in possession of a vast track of form land which included the disputed area.

One Ofori Emmanuel Yaw, who testified as Pw1 for the 1<sup>st</sup> plaintiff In his evidence before the court he averred that after the death of his great grandfather Okomfo Bedidee he was succeeded by his grandfather Kwadwo Fordjour. And that Okomfo Bedidee acquired a large track of land which Kwadwo Fordjour inherited same.

Pw1 added that his grandfather Op. Kwadwo Fordjour, delegated his sister Akosua Gyabea to show a portion of the land to the 3<sup>rd</sup> defendant to farm on.

This has been the evidence of the 3<sup>rd</sup> defendant that his uncle Kwadwo Fordjour delegated his sister Akosua Gyabea to show and put him in possession of the land which included the disputed land. The evidence of pw1 in my views has corroborated the evidence of the 3<sup>rd</sup> defendant.

It is trite law that where the evidence of an opponent corroborates the evidence of the opposite party, the court is bound to accept the corroborated evidence unless there are compelling reasons to the contrary.

See the case of Agyeiwaa v. P & T corporate (2007/08) 2 SCGLR 985.

### **ISSUE THREE**

On issue three, the 1<sup>st</sup> plaintiff in her evidence in chief averred that the disputed plots are their bonafide property by virtue of a gift by their late mother and grandfather of Kwadwo Fordjour. The 3<sup>rd</sup> defendant in his evidence denied the alleged gift of the disputed plots to the 1<sup>st</sup> plaintiff.

The question for the court to ascertain is that, was there a gift or not. For a gift to be valid, there must be a witness during the purported gift, the property must belong to the donor, the donee must provide “aseda” to the donor and also the donee must be in possession. See the case of Akunsah v. Botway & Tel River Farm Ltd (2011) SCGLR 288.

From the evidence before this court, the 1<sup>st</sup> plaintiff could not provide witness to corroborate her claim that the disputed plots were gifted to them by her mother and grandfather Kwadwo Fordjour. And also she failed to tell the court what kind of “aseda” they provided after the purported gift.

The 1<sup>st</sup> plaintiff has failed to prove that the disputed plots Nos, 51 and 52 Sector 5, block K, Adwame East, Berekum were gifted to them.

In conclusion therefore, the 1<sup>st</sup> plaintiff has failed to prove her case that the disputed two plots Nos, 51 and 52 sector 5 block K Adwame east Berekum are their properties. I therefore enter judgment against the 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs. I award cost of GHC2,000.00 against the plaintiffs.

Also, 18/01/2021 I granted an interlocutory injunction which restrained the defendants from constructing on the disputed plots.

The plaintiffs made undertaken which was filed on 22/01/2021 to pay GHC10,000.00 to the defendants in an unlikely event that they lose the case to the defendants. Since the plaintiffs have lose the case, the court has adopted the said undertaken as part of the Judgement of his court. This means that the plaintiff are to pay additional GHC10,000.00 to the defendants.

**SGD**

**H/H SIMON GAGA ESQ.**

**(CIRCUIT JUDGE SITTING)**

**AS ADDITIONAL MAGISTRATE**



**1<sup>ST</sup> PLAINTIFF PRESENT**

**2<sup>ND</sup> PLAINTIFF ABSENT**

**DEFENDANTS-PRESENT**