

SITTING IN THE DISTRICT COURT AT WENCHI IN THE BONO REGION ON  
MONDAY THE 13<sup>TH</sup> DAY OF MARCH,2023,BEFORE HIS WORSHIP ISSAH  
ABDUL-WAHAB (DISTRICT MAGISTRATE)

SUIT NO. A125/2021

BETWEEN

ARABA MARGARET OF TROMESO - - PLAINTIFF

VRS:

OPANIN FRANCIS KYEAME NANTWI - - DEFENDANT  
OF TROMESO

### J U D G E M E N T

The plaintiff instituted this action against the defendant claiming the following reliefs;

- (a) Declaration of title to and recovery of possession of all that piece and parcel of farmland lying, situate and being at a place commonly known and called "DWUMAA NKWADUM" or "AGYA AKROWUA NKWADUM" near Tromeso on Wenchi Stool lands, and bounded by the properties of late Papa Akrowua, Assemblies of God Church, Maame Pokua and the main road from Wenchi to Tromeso.
- (b) General damages for trespass and

- (c) An order for perpetual injunction restraining the defendant, his assigns, workmen descendants and all those who claim from the defendant, from entering the said farmland.

The defendant pleaded not liable to the claims after same were read and explained to him (defendant) in twi.

This court after having examined the pleadings filed by the parties set down the following issues for trial;

- (1) Whether or not the disputed farmland is the property of the plaintiff herein;
- (2) Whether or not the plaintiff has any title to the said land.
- (3) Whether or not defendant trespassed onto the said land;
- (4) Whether or not plaintiff is entitle to a recovery of the disputed farmland.
- (5) Whether or not plaintiff is entitle to any general damages for trespass onto the farmland.
- (6) Whether or not an order will lie for injunction.

In her evidence in-chief the plaintiff told the court she is Araba Margaret and that she lives at Tromeso and is a farmer. Plaintiff said the disputed land was first cultivated by her late maternal grandmother called Aberewaa Dwumaa. That the disputed land is situate and located at a place commonly known and called Dwumwaa Nkwandum but that others call the place Agya Krowua Nkwadum on Wenchi Stool lands and bounded by the properties of Papa Akrowua, Assemblies of God Church, Maame Pokuaa and the main Wenchi to Tromeso road. That the land was named Dwumaa Nkwadum or Agya Akrowua Nkwadum because her (plaintiff) late grandmother and Papa Akrowua both planted bananas as their boundary features and now the said bananas have grown to cover almost all the land. Plaintiff said as the customary successor to her grandmother, the land was bequeathed to her and her siblings they could not cultivate the land because

it has come so close to the Tromeso township and therefore goats and sheep disturbed and destroyed the crops always.

That because of the disturbances from the animals, the land was left to fallow and there the defendant trespassed unlawfully onto the land and gave portions of it to one Asamani to farm.

That because of this plaintiff said one of his uncles approached the defendant to tell him he had trespassed and requested that they go with defendant to the land to demarcate the boundary. That the defendant then said the successor to owner of their family land was in Kumasi and that he had to come before they go for the demarcation and that he (defendant) does not know the boundary. Plaintiff said before the demarcation was done her (plaintiff) uncle died and there defendant took advantage, and trespassed onto the land and winning sand on same. Plaintiff said she and her siblings then summoned the defendant before the Odikro of Tromeso and when a decision was taken by the chief and his elders to visit the land and inspect and demarcate the boundaries the defendant refused to abide by the decision of the elders. That all efforts made to get the defendant stop his trespassory activities failed. Plaintiff said she later saw that the defendant started demarcating the land into building plots and selling same to individuals prospective buyers. She (plaintiff) then decided to come to court. Plaintiff ascertained that the disputed land does not belong to the defendant.

When asked if she (plaintiff) is from Tromeso, and lives there plaintiff said yes, she is from Tromeso and she lives there to. When asked if she ever heard that Maame Dwumaa summoed Akrowuah that he took her land, plaintiff said she never heard that and that the two of them understood themselves in those days.

Plaintiff's sole witness (P.W.1) told the court in his testimony that he is Kofi Andrews and that he is a farmer and lives at Tromeso. That he knows the parties herein.

That the plaintiff is his (P.W.1) elder sister and that he also knows the disputed land. That the land is situate at the Tromemu stream called Dwumaa Nkwandum. That the land is bounded by the properties of Akrowuah Nkwandum, Maame Kosua Dubi (now Assemblies of God Church), Tromeso to Wenchi main road to the ride side of the said road. P.W.1 said it was his late uncle Kwabena Asuma who showed him (P.W.1) the land in dispute and its boundaries.

That because the land came so close to the Tromeso Township he (P.W.1) personally does not cultivate it because goats and sheep destroy the crops. P.W.1 said he later saw the defendant herein winning sand on the land. Then one day he (P.W.1) was called to appear before the Odikro of Tromeso and asked about the boundaries and he (P.W.1) told the elders the features that his (P.W.1) late uncle showed him (P.W.1).

Then later the plaintiff informed him (P.W.1) that the matter had come to court. When asked by the defendant if he (P.W.1) remembers he (defendant) met them (P.W.1) and one before the Odikro of Tromeso over this same land, P.W.1 said that is so. When asked if the Odikro did not ask if his uncle showed him (P.W1) the boundary or he showed the family P.W.1 said he told the Odikro his (P.W.1) uncle showed him the boundary.

In his evidence in-chief the defendant told the court he is Opanin Francis Kyeame Nantwi and that he lives at Tromeso and is a farmer. Defendant said his grandparents acquired the disputed land in its virgin state. That the land in dispute is situate at a place call Akrowua Nkwadum and bounded by the properties of the late Papa Yaw Bodom, and brother Kofi Atta, the Methodist Primary School, the Assemblies of God Church and Maame Pokua whom he personally gave a part of the land to as a gift. Defendant said he succeeded Opanin Akrowua customarily and as a result of that the land was bequeathed to him (defendant) for years now. That he took possession of the land even though one

of the daughters of Akrowua (D.W.1) was on the land. That the disputed land was given to him when the properties of Akrowua were shared by the Wenchi Traditional Council between the family and Akrowua's wife and children. Defendant said after that he then gave part of the land to the Assemblies of God Church, Maame Pokua as well as Theopulus Asomani respectively. That the plaintiff's husband one Kwaku Addai was his (defendant) witness when he gave a part of the land to the said Asomani and the Assemblies of God Church at Tromeso.

That he later summoned plaintiff and her husband before the court but the disput could not be resolved. Then the plaintiff also summoned him before this court. That the late Odikro of the town then begged him (defendant) to give a portion of the land to the town which he did and was once again given the rest of the land. That he was a plan covering the land and signed by the late Odikro and which he shall tender. When told her uncle has ever taken up the issue about the boundary of the land with him (defendant), defendant said he has never gone to the land with plaintiff's uncle.

The first witness for the defendant (D.W.1) was one Elizabeth Owusuaa who said she lives at Wenchi and is a farmer. That she knows the parties herein as residents of Tromeso where she (D.W.1) used to live. That the defendant is her late father's nephew. That she knows the disputed land which shares boundary with river Trome Nyameadom stream and is situate at a place commonly called Akrowua Nkwadum or Tromemu. That the land belongs to her (D.W.1) late father Papa Kofi Akrowua but was given to the defendant as the customary successor of her father even though she (D.W.1) was cultivating the land at the time D.W.1 said she was not sharing boundary with the plaintiff or any of her (plaintiff) relatives including the plaintiff's grandmother Abrewa Dwumaa. That she (D.W.1) farmed on the land for 20 years until her father's relatives summoned her, her mother and siblings before the Wenchi Traditional Council and took the land for the defendant and his relatives.

When asked that at the time her (plaintiff) grandparents farmed on the land if she saw, D.W.1 said she did not.

The second and final witness for the defendant (D.W.2) told the court he is Kyei Baffour Clement and that he lives at Tromeso and is a farmer. That he knows the parties as well as the land in dispute. That the land is at a place called Akrowua Nkwandum on the Wenchi to Tromeso main road on the left. That the land is currently bounded by the Methodist Primary School where one Maame Akosua Dubi was farming D.W.2 said he was a member of the Tromeso.

Plot Allocation Committee and was tasked by Nana Drobo Kese II to allocate three (3) plots to one Pastor of the Assemblies of God Church. That the late chief invited him (D.W.2) the plaintiff's husband and the defendant and told defendant they were taking portions of the land for the pastor. That he is now surprised the plaintiff's husband is claiming the land as part of his wife's family land.

It is instructive to observe upon a careful evaluation of all the evidence that the plaintiff contended that the grandmother, mother called Abrewaa Dwumaa (now deceased) first cultivated the disputed land which is situate at a place commonly known and called Dwumaa Nkwandum or Agya Akrowua Nkwandum. And that the name Nkwadum given to the place was because of the banana plants her (plaintiff) grandmother and the said Papa Akrowuah planted as their boundary features and which banana plants took over almost the entire land. This was corroborated by the plaintiff's witness (P.W.1) who told the court their the disputed land was first cultivated by their said grandmother and that after her demise they could not cultivate the land because it had come so close to the Tromeso township and because of that goats and sheep destroyed the crops. The witness corroborated the plaintiff's ascertainment that the area or the land is widely called Dwumaa Nkwadum or Akrowua Nkwadum and is where the

Tromemu river is located. Here it must be noted that the plaintiff has clearly traced her root of title to the disputed land to their maternal grandmother Abrewaa Dwumaa whom she (plaintiff) said first cultivated the land and share a common boundary with the Papa Akrowuah. It is important to observe that though the defendant herein denied the claim by the plaintiff that the disputed land was cultivated by her (plaintiff) grandmother Abrewa Dwumwaa he (defendant) however corroborated the evidence of the plaintiff on the location of the disputed land, but stated that the land belong to Papa Akrowuah.

This court however found it curious to note that while the defendant tried to create the impression that the plaintiff's said grandmother Abrewaa Dwumaa's name is not in any way associated with the disputed land, when he (defendant) only referred to the land as Akrowua Nkwadum and not also Dwumaa Nkwadum, the defendant when he (defendant) cross-examined the plaintiff suggested to the plaintiff that her grandmother Abrewaa Dwumaa and Papa Akrowua ever litigated over the same land in the past. This then means that contrary to the attempt by the defendant not to associate the plaintiff's grandmother with the disputed land, the said questions he (defendant) asked the plaintiff contradicted his (Defendant) own claim that plaintiff's grandmother had no land in the area. The question asked by the defendant have been captured below as;

Q. Do you know Opanin Kofi Akrowuah of Tromeso.

A. Yes, I know him.

Q. For the past 80 years he worked on the land before he died, were you aware?

A. I know him but the years you mentioned is not up to that.

Q. As you said you live at Tromeso, did you hear that Maame Dwumaa summoned Akrowuah that he took her land?

A. I never heard that because there was love in those day and they understood one another.

So clearly, this line of questions by the defendant contradicted his attempt in his statement of defence and in his evidence in chief to create, the impression that Maame Dwumaa has no land in the area and so is not owner of the disputed land. Obviously the questions by the defendant himself is a clear manifestation of the fact that plaintiff's grandmother Maame Dwumaa and Opanin Akowuah both farmed on the land and indeed shared a common boundary as ascertained by the plaintiff herein and which the defendant rather tried to deny. Indeed if Maame Dwumaa and Papa Akrowuah did not share boundary how could the defendant contemplate a boundary dispute at the time and which dispute resulting in Maame Dwumaa summoning Papa Akrowuah as defendant himself stated.

And it must be stated that if there would have been an issue about the dispute over boundary between the two parties herein that would have pre-dated the parties herein as noted by the defendant himself.

This was even why after the death of Maame Dwumaa and Papa Akrowuah, the plaintiff's late uncle Kwabena Asmah insisted that the two families go to the land and to demarcate the boundary but the defendant refused. Indeed both plaintiff and his witness (P.W.1) contended that said uncle insisted before the Odikro of Tromeso and his elders, that they (two families) go and fix the boundary which the elders accepted but the defendant refused. This clearly established the fact that it has never been said anywhere that the plaintiff's grandmother never cultivated the disputed land. But that what was, and has always been estate is the disputed over the boundary between the land of Maame

Dwumaa (plaintiff's grandmother) and that of Papa Akrowuah. It is therefore not accurate for the defendant herein to claim here in court that the said Maame Dwumaa has no land in the area or has never cultivated the disputed land.

Again, it must be observed that granted that the defendant by asking the stated questions above sought to suggest that because the plaintiff's grandmother Maame Dwumaa never summoned Papa Akrowua for taking her land, means that Maame Dwumaa has nor had no land in the area, that will be a wappied logic. And as obviously stated by the plaintiff in her answer to the defendant about her grandmother never summoning Papa Akrowua, plaintiff said there was love in those days. And if I may add to that, I will also say that plaintiff's grandmother never summoned Papa Akrowua over her land because Papa Akrowuah never tried to take Maame Dwumaa's land as the defendant is trying to do today.

That also means the two of them lived peacefully on their respectively farmland as neighbours and that was why they had no issues.

It is also instructive to note that plaintiff and her sole witness both stated that because of the location of the disputed land, (which close to the Tromeso township), they stopped cultivating crops on it because the goats and sheep destroyed the crops. This then allowed the land to fallow. That was when the defendant tool advantage and trespassed onto the disputed land which is their land. They noted that the defendant first started winning sand on it and they drew his attention to the said trespassory activity but defendant did not stop, then later they detected the defendant was now demarcating the land into building plots and selling same. That was when the summoned defendant before the Odikro of Tromeso. Why then will the plaintiff and her family took all these steps if they had no interest in the disputed land?

That the plaintiff has stated as a matter of fact that her late uncle before he died led the family in trying to get the defendant go with them to redemarcate the boundaries because of the actions of the defendant on their land, and the defendant refused by giving excuses until the plaintiff's uncle died. Then the plaintiff again stated as a fact that when they saw the sand winning activities of the defendant on their land they summoned defendant before the Odikro and his elders. There it was decided they go to determine the parties boundaries and again defendant refused.

And here it must be noted that the defendant never traversed these facts as stated by the plaintiff and her witness save to insist that plaintiff's grandmother has no land in the area. And it could not be the case that the plaintiff and her family would take all these steps if they did not own the disputed land. And this included the plaintiff's family getting the Odikro of Tromeso and his elder to propose fixing the boundary between the parties, if indeed plaintiff grandmother had no land in the area or is not owner of the disputed land.

Also, this court has observed that there has been some inconsistencies in the evidence of the defendant herein on the basis of his claim of the disputed land. The defendant herein in paragraph 3 of his evidence in chief stated that the disputed land is part of land that his grandparents originally acquired in its virgin state. And without naming the said grandparents he claimed originally acquired the land, defendant then went onto state that he succeeded one Opanin Akrowua customarily and as a result of that the land was bequeathed to him and he took possession of same. The defendant made this claim when he did not tell the court his relationship with the said Opanin Akrowua and what also the relationship between the said Opanin Akrowuah and the grandparents he claimed acquired the land was?

Clearly this was important and very necessary in helping this court understand what the rationale for the defendant's claim is relative to the disputed land. Again, it must be noted that even though defendant claimed he took over the land after he succeeded Opanin Akrowua customarily, defendant again went to claim in paragraph 6 of his evidence that it was the Wenchi Traditional Council that gave the disputed land to him at the time that the Traditional Council shared or distributed the properties of Opanin Akrowua between the family and Opanin Akrowua's wife and children.

This is a clear contradiction and inconsistency in the claims of the defendant. If defendant told this court that his grandparents acquired the land and without naming the supposed grandparents, it can be inferred that the land would have been a family property. And ranted that the said claim is true. The question then to ask is at what stage did that same land become the self acquired property of Opanin Akrowua that the Wenchi Traditional Council shared same for defendant and Akrowua's children and wife?

Obviously, the evidence of the defendant herein is not adding up.

Finally, it is important to state that the testimony of the first witness for the defendant, (D.W.1) that is Elizabeth Owusuaa contradicted the defendant on his supposed root of title to the disputed land. Whereas the defendant stated in paragraph 3 of his evidence in chief that the disputed land was originally acquired by his grandparents, and that he subsequently succeeded Opanins Akrowua and tool over the land, his own witness Elizabeth Owusuaa (D.W.1) told this court in paragraph 4 of his evidence that the land belong to her father Papa Kofi Akrowua.

D.W.1 never stated any where that the disputed land was originally acquired by the grandparents of the defendant. This therefore created a sharp contradiction in the

testimony of the witness (D.W.1) as compared with that of the defendant and therefore casting a very serious problem with the veracity of the defendant's claim.

From the evidence therefore, I found the following as facts;

- (1) That the disputed land is part of a farmland originally cultivated by one late Abrea Dwumaa who was the grandmother of the plaintiff herein.
- (2) That the said land is situate in an area where one Papa Akrowua, also farmed and share boundary with the plaintiff's grandmother.
- (3) That the plaintiff's grandmother Abrewa Dwumaa's land is district from the land of Papa Akrowuah.
- (4) That the plaintiff's grandmother land situate at the said Dwumaa Nkwadum or Agya Krowua Nkwadum includes the disputed land.

This suit being a civil one, the law is that the party who in his/her pleadings or writ of summons raise issues that are essential to the success of their case assumes the onus of proof; See *Faibi Vs State Hotels Corp* { 1968} GLR, 176.

This exposition of the law in the case cited above is a restatement of the law on burden of proof as set out in section 11 (4) of the Evidence Act of 1975 (NRCD 323).

The Section 11 (4) states that;

“ In other circumstances the burden of producing evidence requires a party to produce sufficient evidence so that on all the evidence a reasonable mind could conclude that the existence of the fact was more probable than its non-existence”.

The law as stated above requires the party carrying the burden to produce sufficient evidence to make out a claim on a preponderance of probabilities as defined in Section 11 (4) above and Section 12 (1) of the law, NRCD 323.

Section 12 (1) states that;

“ Except as otherwise provided by law, the burden of persuasion requires proof by the preponderance of probabilities”.

In assessing the balance of probabilities as per the evidence therefore, all the evidence must be considered and the party in whose favour the balance tilts is the person whose case ought to be adjudged as more probable and deserving of a favourable verdict.

It is instructive to also state that Section 12 (2) of Act 323 defines the persuasive burden to mean “ the degree of certainty of belief in the mind of the court by which the court is convinced that the existence of the fact was more probable than its non-existence”.

It is therefore settled law that in civil trials the standard of proof is on the preponderance of probabilities. That is to say, a party has to win on the merits of or strength of their case.

See, Section 11 (1) and 12 of the Evidence Act 1975, (NRCD 323) and the case of Kwahikrom Vs Mmony (2010) 28, MLRG, 183 CA.

Again, it must be stated that the law has been settled that in a claim by a party for ownership of land, the party must proof the following;

- (a) His/her root of title to the disputed land;
- (b) The incidence of the acquisition of the land, which includes the identity of the land, and
- (c) The evidence of acts of unchallenged possession of the land.

See, here the case of Nana Amua Gyebu XV Vs Mondial/Veneer Co. Ltd {2020} 32, MLRG, 84, SC .

The law again was set out in the case of Ogbamey Tetteh Vs Ogbamey Tetteh {1993-94} GLR, 353, by the Supreme Court, that “ in an action for declaration of title to land, a plaintiff who failed to establish the root of title must fail because such default was fatal to his case”.

Having therefore considered the evidence before this court and the law as stated above, I can safely conclude on the basis of the evaluation and the findings of fact, made, that the plaintiff herein has proved her claims on the preponderance of the probabilities and as required by law.

Judgement is hereby entered for the plaintiff on all the reliefs;

The reasons for the above conclusion include;

- (1) That the disputed land is part of the plaintiff's grandmothers land situate and being at the place known and called Dwumaa Nkwadum among others.
- (2) That the plaintiff's late grandmother farmed on the said land until her demise when the family took over.
- (3) That the plaintiff's family at a point halted farms on the land due to disturbances from stray animals.
- (4) That the defendant herein took advantage of the plaintiff's and her family's temporary absence and encroached on the land.
- (5) That the claim by the defendant that the disputed land was originally acquired by his grandparents is not supported by any evidence.
- (6) That the plaintiff proved her claims as required by law.

Following declaration and/or Orders are accordingly made;

- (1) The disputed land described by the plaintiff in her particulars of claim is the property of the plaintiff herein.

- (2) An amount of GH¢3,000.00 is awarded against the defendant and for the plaintiff as general damages for the trespass by the defendant.
- (3) The defendant, his assigns, privies, workmen, labourers heirs and anyone claiming and/or acting through the defendant, are restrained forthwith from entering, interfering or in any way or form dealing with eh said land which is the property of the plaintiff and her family.
- (4) Cost of GH¢1,000.00 for the plaintiff and against the defendant.

.....SGD.....

ISSAH ABDUL-WAHAB

(MAGISTRATE)