

SITTING IN THE DISTRICT COURT AT WENCHI IN THE BONO REGION ON
TUESDAY THE 7TH DAY OF MARCH, 2023, BEFORE HIS WORSHIP ISSAH
ABDUL-WAHAB (DISTRICT MAGISTRATE)

SUIT NO. A1/10/2021

BETWEEN

BOYE GYAMFI SUING FOR HIMSELF AND) - - PLAINTIFF
FOR THE AHENFI FAMILY OF YABRASO)

VRS:

GYAWU JOSEPH OF NSAWKAW - - DEFENDANT

J U D G E M E N T

The plaintiff herein as per his amended writ sought from this court and against the defendant herein 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 “KOO TIWAAKROM” near Attakrom on Nsawkaw stool lands and bounded by the properties of Koo Tiwaa Road, Kwame Jacob, Opanin Yaw Kumah, and Opanin Yaw Nkrumah respectively.
- (b) General damages for trespass.
- (c) An order for perpetual injunction restraining the defendant, his agent, assigns, workmen, labourers, descendants etc. from entering, or interfering with the plaintiff's land.

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

Having therefore considered the pleadings as filed by the parties herein, the following issues were set down for trial;

- (1) Whether or not the disputed farmland is the property of the plaintiff and his Ahenfi family.
- (2) Whether or not the plaintiff has trite to the said farmland.
- (3) Whether or not the plaintiff is entitle to a recovery of the said land.
- (4) Whether or not the defendant has committed any trespass onto the disputed land;
- (5) Whether or not the plaintiff is entitle to any general damages for trespass.
- (6) Whether or not an order of this court will lie for an injunction against the defendant herein.

The plaintiff's overall evidence led in prove of his (plaintiff) claims consisted of his evidence in chief and the testimony of his sole witness.

In his evidence in-chief, plaintiff told the court he is Boye Gyamfi and that he is a farmer and lives at Yabraso. That he knows the defendant who is also a farmer as well as a driver and lives at Nsawkaw. Plaintiff said he knows the land in dispute which is at Kootiwaakrom on Nsawkaw Stool lands and shares boundary with Kootiwaa Road, Kwame Jacob, Opanin Yaw Kumah and Opanin Y aw Nkrumah respectively.

Plaintiff said the land was originally gifted to him by his uncle Mr. Kwabena Boakyee. That the said late Kwabena Boakyee cultivated palm trees and food crops on the land. After the death of Kwabena Boakyee, plaintiff said he was appointed his successor customarily and he (plaintiff) took immediate possession of the disputed land.

Plaintiff said he then left the land for 6years to fallow to enable him cultivate same but after the 6years he (plaintiff) sold the land to one Mr. Jacob. Then when the said Mr. Jacob went onto the land, the defendant sacked him from the land. Plaintiff said the land was gifted to him by his uncle. That is why he has come to court. When asked if he (plaintiff) ever farmed on the land, plaintiff said yes. When asked how many years he (plaintiff) farmed on the land, plaintiff said he (plaintiff) can't tell.

The sole witness for the plaintiff (P.W.1) was one Joseph Dankwah, who said he is a farmer and lives at Nsawkaw. That he knows the parties and the disputed land. That the land is at "Kotiwaakrom" on Nawkaw stool lands. That the land shares boundary with the properties of late Yaw, Nkrumah which he (P.W.1) is currently occupying, the plaintiff's late father Kwadwo Amoah currently occupied by the defendant even though the defendant is not related in any way to the said Op. Kwadwo Amoah, late Op. Kofi Mensah (P.W.1's father) Op. Yaw Kumah and the Kootiwaa Road respectively. That the plaintiff's land was originally acquired by the plaintiff's late uncle Op. Kwabena Boakye. That the plaintiff uncle cultivated palm trees and food crops on the land and after his death the plaintiff succeeded him (Op. Kwabena Boakye) as the customary successor.

P.W.1 said though the defendant's grandfather cultivated the land leading to the road to "Kotiwaakrom", the place is called "Nkokrowansia" and therefore the disputed land at Kootiwaakrom" is not part of the land the defendant claims belongs to his family. P.W.1 said his uncle's Yaw Nkrumah's land he (P.W.1) currently occupies is in between the plaintiff's land (Op. Kwabena Boakye's land) and the late Op. Kwadwo Amoah's land which the defendant has trespassed onto and is currently claiming. The witness said he is surprised that defendant is claiming portions of the plaintiff's land. That the defendant does not share boundary with the plaintiff. That the defendant trespassed onto the plaintiff's land. The witness in conclusion stated that the defendant and his family have no land at the area in dispute now. That the defendant's land is at "Nkokrowansia" which

is far from “Kootiwaakrom” though the two places are on the same road or route. When asked where the disputed land is located, P.W.1 said it is at “Kootiwaakrom” when asked if he (P.W.1) said his (P.W.1) land is between defendant’s land and that of plaintiff, P.W.1 said that is true. When asked whether his (Defendant) grandfather, Paul Yaw Krah farmed on the disputed land, P.W.1 said defendant’s grandfather’s land is at “Kokrowansia” but he did not farm at “Kootiwaakrom” and that defendant’s grandfather has no land in the disputed area and has no land at “Kotiwaakrom”.

The evidence of the defendant was his testimony (evidence in-chief) and the testimony of his two (2) witnesses.

The defendant told the court he is Gyau Joseph and that he is a farmer and lives at Nsawkaw. That he knows the plaintiff who is also a farmer and lives at Yabraso. Defendant said he knows the disputed land which is located at a place called “Kootiwaakrom”/Nkokrowansia near Attakrom on the Nsawkaw stool lands. That the said land shares boundary with the properties of Yaw Danquah (Yaw Nkrumah), Kwaku Mensah a.k.a O.B and Attakrom to Kootiwaakrom main road.

Defendant the said land shares boundary with the plaintiff on the Northern side of the land which is a forest but not in dispute but that it is rather the southern part which is a grassland. That it was his (defendant) grandfather Paul Yaw Krah who cultivated the land in disputed in its virgin state and after his death the land was bequeathed to his (Defendant) mother’s who also handed same to his (defendant) late uncle Kwadwo Kumah. Defendant said he also succeeded the said uncle and became custodian of the of the land after the death of his uncle Kwadwo Kumah. That the grandfather owed the land and which he gave to his children including his (defendant) mother who is the late Abena Fosuaa, and his (Defendant) uncle Kwadwo Kumah whom he (defendant) succeeded. Defendant said he has been on the land 1988. That he has been on the land with other

family members cultivating food cash crops on same. That he was therefore surprised that plaintiff carved about 30 acres of the said land and sold same to people. Defendant said he stopped the said buyers and that prompted plaintiff to come to court. When asked which year he went on the disputed land, defendant said since the year 1986.

When asked if there was a farm when he went on the land and that it was Nana Kwabena Boakye who cultivated it as a virgin land. When asked if his (defendant) land is near his (plaintiff) land, defendant said the lands are close and that he shared boundary with the said Nana Kwabena Boakye.

The first witness for the defendant told the court he is Mathew Agyei Mensah (D.W.1) and that he is a labourer at the Nsawkaw State S.H.S. D.W.1 said he knows the parties herein and the disputed land. That the land is located at “Kootiwaakrom” on Nsawkaw Stool lands. That the land shares boundary with the properties of himself (D.W.1), Yaw Danquah and that the plaintiff does not have land that shares boundary with the defendant. D.W.1 said he has been cultivating his (D.W.1) from the 1970s while the defendant has also been on his land from the 1980s.

That the defendant and himself have cultivated food crops on the land and he (D.W.1) never saw the plaintiff in the area. The witness (D.W.1) said he is surprised the plaintiff is here claiming the land. That the plaintiff does not have any land at “Kootiwaakrom” D.W.1 said plaintiff even carved a portion of his (D.W.1) land and sold same but he (D.W.1) reclaimed his land. He (D.W.1) said the plaintiff does not have any land in the area. When asked by plaintiff if he (D.W.1) knows him at Kootiwaakrom D.W.1 said he knows plaintiff.

When asked if he (D.W.1) met him when he came to Kootiwaakrom D.W.1 said he did not meet plaintiff.

The second and final witness (D.W.2) for the defendant told the court he is Amore Kwaku Frafra and he lives at Abekeaw near Tainso and is a farmer. The witness said he knows the parties as well as the disputed land which is situate at Kootiwaakrom on Nsawkaw stool lands. The witness said the defendant gave him (D.W.1) a portion of the disputed land to farm and there he saw that the defendant shares boundary with D.W.1 herein. D.W.2 said the portion given to him was grassland and he cultivated food crops, such as yam, cassava and vegetables for 2years. D.W.2 said this is about 20years ago. That at the time he cultivated the land he was with D.W.1, one Kwabena Anko, and then Kwabena Gyan in the area and they were also on their respective farmlands. He said he never saw the plaintiff herein nor his family members on the disputed land. When asked which year he went on to the disputed land, D.W.2 said 22years ago, and that it was the defendant who gave him the land and he (D.W.2) did not see anyone there.

Upon a careful evaluation of the evidence as adduced before the court, it is important to observe that the plaintiff stated that the disputed land belongs to his late uncle Kwabena Boakyee who cultivated same in its virgin state until his death.

This even though has been corroborated by the plaintiff's sole witness (P.W.1) call Joseph Danquah that the plaintiff late uncle Kwabena Boakyee cultivated the farmland they however contradicted each other on the boundaries they both claimed was cultivated by the said Kwabena Boakyee. Whereas the plaintiff named the Kootiwaakrom Road, Kwame Jacob, Op. Yaw Kumah and Op Yaw Nkrumah as boundary owners, plaintiff's witness Joseph Danquah (P.W.1) said the disputed land shares boundary with the properties of Yaw Nkrumah (which he currently occupies), the plaintiff's late father Kwadwo Amoah's land (which is occupied by the defendant) the land of Op. Kofi Mensah (P.W.1's father), Op. Yaw Kumah and the Kootiwaakrom Road. Clearly these different boundaries named by the plaintiff and his sole witness shows the two are talking about 2 different farmlands and not the one in dispute. And it must be noted that

the defendant though agreed that the said Op. Kwabena Boakye has land in the area and that he (defendant) went to the area in the 1980s to meet the said Opanin Kwabena Boakye but not on the disputed land.

Defendant contended that the disputed land is a portion of his grandfather Op. Paul Yaw Krah and which land he cultivated in its virgin state and which land is district from the land of Op. Kwabena Boakye, the plaintiff's late uncle.

Defendant stated that the grandfather cultivated the land until he gave same to his children including his (defendant) mother Abena Fosuaa and his (defendant) uncle Kwadwo Kumah whom he (defendant) succeeded customarily upon his death. It is therefore obvious from the evidence led by the plaintiff that the identity of the land the plaintiff claims herein has not been properly established and relative to his said late uncle Op. Kwabena Boakye.

Again, it is very instructive to observe that the plaintiff from the evidence never farmed on the disputed land he claiming belongs to his (plaintiff). In his evidence in-chief the plaintiff never told the court if he ever farmed on the disputed land. It is (plaintiff) sole witness (P.W.1) did not also tell the court if the plaintiff farmed on the land, beside the claim that the plaintiff's late uncle acquired the land.

The defendant on his part has been very emphatic in his submission that the plaintiff never farmed on the disputed land. This again was corroborated by the first witness (D.W.1), Mathew Agyei Mensah who said he shares boundary with the defendant on the disputed land and that he (D.W.1) has never seen the plaintiff herein on the land. D.W.1 said he went on to their land in the 1970s and that even though he shares boundary with the defendant who also went on their land in the 1980s, he however has never seen the plaintiff on the disputed land.

Having therefore established that the plaintiff even though claims the disputed land belongs to him has never farmed on same. It is therefore not surprising that the identity of the land the plaintiff claims appears to be lost on the plaintiff as he and his sole witness both gave different descriptions of the same land. And it is very essential that in a claim for title for land, the party establishes the identity of the land he claims or the land in dispute. The failure on the part of the plaintiff herein therefore to do same is very fatal to his case.

Finally, it must be noted that the defendant said he has been on the disputed land since 1986 and this was after the death of his uncle whom he succeeded customarily and who was the one cultivating the land. This was confirmed by the two witnesses of the defendant who both told the court the defendant has been on the disputed land for decades. D.W.1 told the court his land shares boundary with the disputed land which he has known to be the property of the defendant from the 1980s after the defendant took over same from his late uncle Op. Kwadwo Kumah.

Defendant said the only time he saw plaintiff on the disputed land was when plaintiff carved some 30 acres of the disputed land and sold same to some people but he (defendant) reclaimed same from the said buyers. This again was corroborated by D.W.1 who said plaintiff also sold a portion of his (D.W.1) land and he also resisted the sale and took back his (D.W.1) land.

From the evidence therefore I found the following as facts

- (1) That the plaintiff's late uncle, Op. Kwabena Boakyee and the defendant's late grandfather Op. Paul Yaw Krah farmed in the same area but on their respective district farm lands.

- (2) That the defendant herein later took over the grandfatehrs said land at Kootiwaakrom from his late uncle Kwadwo Kumah whom he (defendant) succeeded customarily.
- (3) That the defendant has since farmed on the said land and which includes the disputed land.
- (4) That the plaintiff has never farmed on the disputed land as he claims but only tried to sell same but the defendant resisted the attempt.
- (5) That the proper identity of the land plaintiff claims belongs to his uncle has not been established.

The law is that in a civil trial, the party who in his/her writ of summons or pleadings raise issues that are essential to the success of their claim assumes the onus of proof. See *Faibi Vs State Hotels* ORP {1968} GLR, 176.

This burden imposed the averring party in the decision cited above is anchored on the provisions of Section 11 (4) of the Evidence Act, 1975 (NRCD 323) 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 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 Act 323.

Section 12 (1) states that;

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

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 also the law that where a party in a suit claims ownership of land, the party must proof;

- (a) His/hers root of title,
- (b) The incidence of acquisition of the land and its identity and.
- (c) Evidence of acts of unchallenged possession.

See; here the case of Nana Amua Gyebu XV Vs Mondial/Veneer Co Ltd { 2011} 32 MLRG, 84 SC.

In relating the law as stated above to the evidence as adduced before this court, it must be noted that the plaintiff herein though claimed the late uncle owned the disputed land, the defendant herein refused the claim and argued that though the said late uncle of the plaintiff, by name Op. Kwabena Boakye owned land in the area, that is not the land in dispute. The defendant contended that the disputed portion or land is part of his (defendant) family land originally acquired by his late grandfather.

This coupled with the inconsistencies in the evidence of the plaintiff and his sole witness (P.W.1) on the boundaries of the said land of the plaintiff clearly created no difficulty for this court in coming to the conclusion that the plaintiff did not establish the clear identity of the land he claims was acquired by his late uncle.

Again, the evidence led by the plaintiff also showed that the plaintiff has not farmed on the disputed land as opposed to the fact that the defendant has been on the land since the 1980s and this was corroborated by the witnesses that the defendant called. It was

therefore obvious from the evidence that when it comes to the identity of the disputed land the defendant knows same more than the plaintiff.

Having therefore considered the law and the evidence before this court it is my conclusion that the plaintiff has not to prove his claims against the defendant and same failed.

The reasons for the above conclusion include;

- (1) That the plaintiff's late uncle and the defendant's grandfather acquired their farmland in the same area called Kootiwaakrom" on the Nsawkaw stool lands.
- (2) That the defendant from the 1980s took over his family's land after he succeeded his late uncle upon his demise.
- (3) That the plaintiff even though plaintiff claimed the disputed land belongs to him, the failed to prove same as he has never farmed on the disputed land and ha not also given the precise identity of the land.
- (4) That the plaintiff also failed to prove his claims on the preponderance as required by law.

The claims of the plaintiff are accordingly dismissed. Cost of GH¢1,000.00 against the plaintiff and for the defendant.

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ISSAH ABDUL-WAHAB

(MAGISTRATE)

