

SITTING IN THE DISTRICT COURT AT WENCHI IN THE BONO REGION ON  
WEDNESDAY THE 22<sup>ND</sup> DAY OF MARCH, 2023, BEFORE HIS WORSHIP ISSAH  
ABDUL-WAHAB (DISTRICT MAGISTRATE)

SUIT NO. A1/37/2022

BETWEEN

HANAH NKANSAH SUING FOR HERSELF - - PLAINTIFF

AND SIBLINGS OF TECHIMAN

VRS:

1. KWASI APIUMASU )  
2. NANA DAMOAH (DABEHENE OF BADU) ) DEFENDANTS  
3. ABIBA TUAYIRI )

ALL OF BADU

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

The plaintiff herein filed this suit against the defendants herein jointly and severally, seeking the following reliefs;

- (a) 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 “Bepoayase” near Badu on Badu stool lands and bounded by the properties of Kwasi Amoako, Yaw Tia, Haruna Kramo, late Kwaku Addai and a stream respectively.
- (b) General damages for trespass.

- (c) An order for perpetual injunction restraining the defendants, their agents, assigns, privies, labourers etc and all those who claim through the defendants from entering or interfering with the plaintiff's land.

The 1<sup>st</sup> defendant (D1) pleaded not liable to the claims after same were read and explained to him (D1). The 2<sup>nd</sup> and 3<sup>rd</sup> defendants failed/refused to come to court inspite of been served.

This court having therefore examined the plaintiff pleadings filed by the parties (plaintiff and 1<sup>st</sup> defendant) the following issues down for trial;

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

The evidence of the plaintiff herein in prove of his claims consisted of his evidence in chief and the testimony of his two witnesses (P.W.1 and P.W.2).

The plaintiff told the court she is Hannah Nkansah and that she lives in Techiman and is a trader. That she is related to the 1<sup>st</sup> defendant herein (D1). She however has no relationship with 2<sup>nd</sup> defendant and 3<sup>rd</sup> defendant. Plaintiff said the disputed farmland was acquired by her father Opanin Yaw Nsiah (now late) in its virgin state. That the land is situate, lying and being at a place commonly known and called "Bepoayase" on Badu stool lands. That the father gifted the said disputed land to her (plaintiff) and her siblings

and they provided drinks as custom demands to thank their father (Aseda). This was in the year 1986 before their father died in 1988.

That her (plaintiff) late sister by name Akosua Mary then took possession when she moved from Nkoranza to Badu. That the sister was on the land with one Kofi Adiya. Plaintiff said her sister Akosua Mary later died and the portion she was on was left fallow but the disputed land which was in the possession of Kofi Adiya was later occupied by the 1<sup>st</sup> defendant herein. That the 1<sup>st</sup> defendant then claimed the disputed land belongs to his (D1) grandfather Kwabena Adade and Kofi Adiya, his (D1) uncle. Plaintiff however said the disputed land belongs to her (plaintiff) parents, Opanin Yaw Nsiah and Akua Naomi Dapaah of blessed memory.

That the said Kwabena Adade (now deceased) who was her (plaintiff) uncle, begged her (plaintiff) father to give him a portion of his (Opanin Yaw Nsiah) land to cultivate after he relocated from Awisa to Badu, a year after the said gift. That the uncle returned the land to her (plaintiff) mother Akua Naomi Dapaah.

That it was later on that the said Kofi Adiya who was also the 1<sup>st</sup> defendant's uncle begged for the land from the late Kwabena Adade to cultivate, but the late Kwabena Adade told Kofi Adiya that he gave back the land to his sister being her (plaintiff) mother (Akua Naomi Dapaah) and so he, Kofi Adiya should contact her (plaintiff) mother.

Plaintiff said her (plaintiff) mother then gave the disputed land to Kofi Adiya to cultivate same because they are relatives, but not to take same forever. Plaintiff averred that the 1<sup>st</sup> defendant started claiming the land and said it belongs to the late Kwabena Adade and Kofi Adiya who were his grandfather and uncle respectively. Plaintiff said she (plaintiff) and her siblings including her (plaintiff) witness in this case drew the attention of the 1<sup>st</sup> defendant to his (D1) unlawful trespass onto the land but the 1<sup>st</sup> defendant refused to listen and rather sold portions of the 2<sup>nd</sup> and 3<sup>rd</sup> defendants (D2 and

D3) herein. That all attempts made to persuade the 1<sup>st</sup> defendant failed as he continued with his (D1) trespassory acts. Plaintiff said they then decided to bring this action against, the defendants.

Plaintiff said the disputed land shares boundary with the properties of Kwasi Amoako, Yaw Tia, Haruna Kramo, late Kwaku Adade and a stream respectively.

The first witness of the plaintiff (P.W.1) told the court he is John Osei Yaw and that he is a farmer and lives at Badu. That he knows the plaintiff as well as the 1<sup>st</sup> defendant but he does not know 2<sup>nd</sup> defendant and 3<sup>rd</sup> defendants herein. P.W.1 said he knows the disputed land which is situate and being at a place called and known as “Bepoayase” on Badu stool lands through him (P.W.1) does not know the boundaries. The witness said the disputed land was acquired by the plaintiff’s father Opanin Yaw Nsiah (now late) in its virgin state and cultivated same with Akua Dapaah, the plaintiff’s mother. The witness said the late Opanin Yaw Nsiah later gifted the disputed land to his wife Akua Dapaah before he died. That he gave it to Akua Dapaah and her children including the plaintiff herein and there were witnesses present including himself (P.W.1). That they provided drinks as “Aseda” This was before Opanin Yaw Nsiah died.

That one Kwabena Adade (now late) who was the brother in-law of Opanin Yaw Nsiah, the plaintiff father, was then given a portion of his land to farm, when he relocated to Badu from Awisa to feed himself. That after a year Kwabena Adade stopped cultivating the land and gifted same to his sister being the plaintiff’s mother.

That the late Kofi Adiya who is the nephew of Kwabena Adade, then asked for the land gifted to Kwabena Adade to cultivate same, but Kwabena Adade told Kofi Adiya that he (Kwabena Adade) has given the land to Akua Dapaah who is the mother of the plaintiff herein and that the land is no longer for him. The witness (P.W.1) said the 1<sup>st</sup> defendant herein is therefore claiming the disputed land that he (D1) still thinks the land

belongs to the late Kwabena Adade and Kofi Adiya who are the 1<sup>st</sup> defendant's grandfather and uncle respectively.

P.W.1 said all their family members, including himself (P.W.1) called 1<sup>st</sup> defendant after plaintiff drew their attention to the trespassory acts of 1<sup>st</sup> defendant, and told 1<sup>st</sup> defendant (D1) that the owners of the disputed land is the plaintiff's parents and the 1<sup>st</sup> defendant agreed and then promised he (D1) will vacate the land after harvesting his maize he planted. But that 1<sup>st</sup> defendant (D1) did not leave after that and is rather selling portions of the 2<sup>nd</sup> and 3<sup>rd</sup> defendants herein. That the plaintiff first summoned D1 before the Badu Traditional Council but 1<sup>st</sup> defendant (D1) went and told Nananom that he will not allow them to settle the matter and left. Nananom then told plaintiff to take the matter whenever she (plaintiff) wanted.

Plaintiff's second and final witness (P.W.2) was Yaw Owusu who said he is a farmer and lives at Badu. That he knows the plaintiff and her siblings as well as the defendants herein. P.W.2 said he also knows the disputed land which is situate and lying at "Bepoayase" near Badu on Badu stool lands but that he (P.W.2) does not know the boundaries. That the plaintiff and her siblings complained to the Kwansera Royal Family of Badu about the 1<sup>st</sup> defendant who is their relative and has been cultivating the land in dispute but has started selling same to 2<sup>nd</sup> and 3<sup>d</sup> defendants. P.W.2 said as a prominent member of the Kwansera Royal Family they sat on the matter to settle the dispute. That the 1<sup>st</sup> defendant denied the allegation but stated that the land belongs to his late uncle Kofi Adiya who he (D1) succeeded.

P.W.2 said he succeeded the said Kofi Adiya and that the disputed land was not part of the properties of Kofi Adiya he inherited. That the only land Kofi Adiya owned, he gave to his children before he died and that land is situated at a place called "Kuntutadieso" near Badu on the Badu stool lands.

The witness (P.W.2) said after the settlement the 1<sup>st</sup> defendant pleaded with the panel as well as the plaintiff and her siblings to allow him (D1) harvest his maize on the land and leave same. P.W.2 said the panel which included himself (P.W.2) visited the disputed land with the parties and a surveyor called Seth Bae who surveyed the land and erected pillars on the boundaries of the land in dispute with the full assistance of the 1<sup>st</sup> defendant (D1) showing the boundaries.

The witness (P.W.2) said after all these the plaintiff later informed him (P.W.2) that the 1<sup>st</sup> defendant (D1) has sold part of the land in dispute to the 3<sup>rd</sup> defendant and said the land belongs to him (D1). P.W.2 said he then advised the 3<sup>rd</sup> defendant that the land belongs to the plaintiff and her siblings and not the 1<sup>st</sup> defendant who sold it to him. P.W.2 said when 1<sup>st</sup> and 3<sup>rd</sup> defendants failed to leave the land the plaintiff then came to court.

In his evidence in-chief, the 1<sup>st</sup> defendant told the court he is Kwasi Apimasu also known as Anthony Boateng. That he lives at Badu and is a farmer. That the plaintiff and her (plaintiff) siblings are his (D1) relatives. The 1<sup>st</sup> defendant said the disputed land is situated and being at a place known and called "Bepoayase" near Badu on Badu stool lands. That the land shares boundary with the properties of the late Op. Yaw Nsiah, Haruna Kramo, Op. Kwaku Addai, Opanin Gyansa as well as the Nyinasua stream respectively. 1<sup>st</sup> defendant said the disputed land was acquired in its virgin state by the late Kwabena Adade who gave same to the late Kofi Adiya who was staying with the late Kwabena Adade.

That after the death of the wife of Kwabena Adade he left "Bepoayase" to Awisa. The defendants said the late Kofi Adiya who was his (D1) uncle took immediate possession of the land in dispute and built a cottage on same. That he then stayed on the land with the wife and children until he left the land to fallow and went to Sefwi. That he later on came back to cultivate the land until the late uncle Kofi Adiya gave the land to

him (D1) in 2007 to cultivate. 1<sup>st</sup> defendant said he started cultivating the land in the year 2007 and planted cashew on same. That before the cashew he planted maize and cassava on the land.

That he (D1) cultivated the land until 2019 when the plaintiff and her siblings came claiming the disputed land. That the demarcation of the boundaries had been done between him (D1) and the plaintiff and the plaintiff's erected pillars on their boundaries and he also planted teak trees on his (D1). That in the year 2020, the plaintiffs again erected pillars around his (D1) portion and claimed same and dragged him (D1) before the Gyasehene of Badu Traditional area but the matter could not be resolved because the Gyasehene asked him (D1) to leave the land but he refused as the Gyasehene was bias. That the plaintiffs took him to the Badu Traditional Council but he (D1) refused to go. That he (D1) sold a portion to 2<sup>nd</sup> defendant and 3<sup>rd</sup> defendant to raise some money but the plaintiffs again brought him (D1) to court.

The 1<sup>st</sup> defendant's sole witness (D.W.1) in his testimony told the court that he is Yahaya Haruna and that he lives at Badu and is a farmer. That he knows the plaintiff as well as the 1<sup>st</sup> and 2<sup>nd</sup> defendants but he does not know the 3<sup>rd</sup> defendant. D.W.1 said he knows the disputed land which shares boundary with his (D.W.1) father, Yahaya Kramo's farmland and which said land he (D.W.1) currently occupies. That the land in dispute is situate at "Nyinasuam" near "Bepoayase" on Badu stool lands. That the land also shares boundary with a stream call "Nyinasua" but that he (D.W.1) does not know the rest of the boundaries of the said disputed land. D.W.1 said he also knows the late Kofi Adiya also shared boundary with his (D.W.1) father's land. D.W.1 said he saw the 1<sup>st</sup> defendant's uncle Kofi Adiya as at the year 1975 but he did not know the first person to acquire the land in its virgin state. That he (D.W.1) also saw the 1<sup>st</sup> defendant's uncle Kofi Adiya build a farm cottage on the land and where he stayed to cultivate the land.

Then later he saw that Kofi Adiya left the land and went to Sefwi in the Western Region. Then the 1<sup>st</sup> defendant was on the land cultivating same until the late Kofi Adiya died.

D.W.1 said he once had a boundary dispute with 1<sup>st</sup> defendant and they settled it. Without the involvement of the plaintiff herein nor any of the plaintiff's family members. The witness (D.W.1) in conclusion said from the time he followed his father to their land. It was only the 1<sup>st</sup> defendant and his uncle Kofi Adiya he saw on the land in dispute.

After a careful evaluation of all the evidence adduced before this court, it is very imperative to observe that the plaintiff herein contended that the disputed land which is situate and being at a place commonly called "Beyoayase" was originally acquired and cultivated in its virgin state by her (plaintiff) late father Opanin Yaw Nsiah and that the said land is on the Badu stool lands. This was corroborated by the two witnesses of the plaintiff (P.W.1 and P.W.2) who both told this court that the disputed land was acquired by the plaintiff's father and that he cultivated same with his wife Akua Dapaah who was the mother of the plaintiff herein. Indeed the evidence of the plaintiff has strongly established her root of title to the disputed land when it showed that the said Opanin Yaw Nsiah and the wife Maame Akua Dapaah having cultivated the land in its virgin state continued to be in occupation of same without any let or hinderance from any person on their ownership of the disputed land. This also was not controverted by the defendants herein with any evidence to the contrary.

Again, it must be noted that the plaintiff's evidence also established the fact that her father Opanin Yaw Nsiah later made a gift of the disputed land to his wife Maame Akua Dapaah and her children which includes the plaintiff herein. In fact this was an assertion made by the plaintiff and which was again corroborated in greater detail by her witnesses. The 1<sup>st</sup> witness for the plaintiff (P.W.1), John Osei Yaw told the court in his testimony that the plaintiff's father Opanin Yaw Nsiah subsequently gifted the land in



dispute to his wife Maame Akua Dapaah and her children including the plaintiff herein with witnesses present including himself (P.W.1). P.W.1 stated that Maame Akua Dapaah and her children also provided drinks as “Aseda” as custom demands to Opanin Yaw Nsiah and this was before Opanin Yaw Nsiah died.

This again was not dislodged any way by the defendants. It must also be noted that the defendants also failed to controvert the in fact as stated by the plaintiff that after the death of her (plaintiff), their sister called Akosua Mary took possession of the disputed land after she relocated to Badu from Nkoranza where she had then lived. Plaintiff again stated that even before her (plaintiff) sister Akosua Mary took over the land, one Kofi Adiya occupied same until her (plaintiff) sister Akosua Mary came and took over the land. Plaintiff noted that when her sister also died, the land was left to fallow including the disputed portion and that was when the 1<sup>st</sup> defendant herein encroached on same. This again was corroborated by the witnesses of the plaintiff ( ie P.W.1 and P.W.2) when P.W.2 told the court that the plaintiff once summoned the 1<sup>st</sup> defendant before them at Badu Traditional Council for going onto plaintiff’s land which is in dispute now. P.W.2 said the issue was decided in favour of the plaintiff.

The witness that the 1<sup>st</sup> defendant then pleaded with the panel and the plaintiff to be allowed to harvest his (D1) maize he had planted before he leaves the land. The witness said (P.W.2) the panel even visited the disputed land with a surveyor called Seth Bae and erected pillars on same along the boundaries of this same disputed land. It is important to observed that the 1<sup>st</sup> defendant himself confirmed and corroborated this when he also noted in paragraph 8 of his evidence in-chief that whiles h was on the disputed land the plaintiff and her siblings claimed same and the disputed was settled and pillars erected and that he (D1) also planted teak as his (D1) boundaries features. What however the 1<sup>st</sup> defendant did not tell the court is which of his (D1) lands he planted the teak on. This is because the plaintiff and her witnesses ascertained that the disputed over the land was

settled in favour of the plaintiff and her siblings and that was why the pillars were erected as boundary marks.

It is again instructive to observe that whereas the plaintiffs herein traced their root of title to the disputed land to their late father Opanin Yaw Nsiah, and which has been greatly corroborated by their witnesses, ie P.W.1 and P.W.2 herein, the 1<sup>st</sup> defendant (D1) also told the court the disputed land was first acquired by the late Kwabena Adade and which he later gave to the late Kofi Adiya, the 1<sup>st</sup> defendant's uncle.

The 1<sup>st</sup> defendant then contended that he succeeded his said late uncle Kofi Adiya and for which reason he (D1) took possession of the disputed land. This ascertainment or claim by the 1<sup>st</sup> defendant (D1) has not been supported or corroborated in any way by his sole witness (D.W.1) one Yahaya Haruna. The witness (D.W.1) in his testimony only told the court that he (D.W.1) saw the said Kofi Adiya on the disputed land at the time he (D.W.1) was also on his (D.W.1) father's land and which said land shares boundary with the disputed land. The witness (D.W.1) Yahaya Haruna however told the court categorically, that he does not know the person who first cultivated the said disputed land. This means that D.W.1 said he does not know the own (original owner) of the disputed land.

This is contained in the paragraph 6 of the evidence of D.W.1 herein. It is therefore very obvious that unlike the plaintiff's the 1<sup>st</sup> defendant's claim that Kwabena Adade acquired the disputed land and later gave same to his (D1) uncle called Kofi Adiya has not been substantiated.

Moreso, the second witness for the plaintiff (P.W.2) i.e. Yaw Owusu, also disclosed the claim by the 1<sup>st</sup> defendant that he succeeded Kofi Adiya and as a result took over the disputed land. In fact P.W.2 told the court that he (P.W.2) was the one who succeeded the late Kofi Adiya and not the 1<sup>st</sup> defendant as he (D1) claimed. Again P.W.2 stated that Kofi Adiya was not the owner of the disputed land and did not even have any land at the

place where this land in dispute is situate i.e. "Bepoayase". P.W.2 told this court that he as the customary successor to the late Kofi Adiya knows that Kofi Adiya's land which he even gave to his children before he died is at a place call "Kuntudadeso". So clearly whereas the plaintiffs herein have satisfactorily traced their root of title to the land in dispute, the 1<sup>st</sup> defendant appears not to know the disputed land as he claims.

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

- (1) That the disputed land located at the said place called Bepoayase was first cultivated by one Opanin Yaw Nsiah who is the late father of the plaintiffs herein.
- (2) That the said Opanin Yaw Nsiah was in possession of the land until he gave same to the plaintiffs herein before his demise.
- (3) That the 1<sup>st</sup> defendant herein first trespassed onto the land but was resisted by the plaintiffs who successfully took back their land after they summoned 1<sup>st</sup> defendant before some elders at Badu.
- (4) That the 1<sup>st</sup> defendant again trespassed by selling portions to 2<sup>nd</sup> and 3<sup>rd</sup> defendants herein which again was resisted by the plaintiffs resulting in this instant action.

The law lactating to the burden on the parties in a civil suit such as this one is settle. The party who in his/her pleadings or writ of summons raise the issues that as essential to the success of their case assumes the onus of proof. See *Faibi Vs State Hotels Corp.* {1968} GLR, 176.

This burden on the averring party as stated in the case above, is anchored on Section 11 (4) of the Evidence Act, 1975. (NRCD 323) which states that "Section 11 (4) " 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”.

This 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 Act 323.

Section 12 (1) states that

“Except as otherwise provided by law, the burden of persuasion requires proof by the preponderance of probabilities. And Section 12 (2) defines the persuasive burden as Section 12 (2) “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”.

Therefore the standard burden of proof in civil cases is proof by the preponderance of probabilities. That is to say the party who wins must win on the merits or strength of their case as determined by the court.

In a suit for a declaration of title to land, the claiming ownership of the disputed land must prove;

- (a) His /Her root of title to the land.
- (b) The incidence of acquisition.
- (c) The evidence of acts of unchallenged possession.

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

The law as again set clearly in the case of Ogbamey Tetteh Vs Ogbamey Tetteh {1993-94} GLR, 353, when the Supreme Court held 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 there considered all the evidence and the law, it is the conclusion of this court on the basis of the findings of fact, made above, that the plaintiffs herein have satisfactorily proved their claims and on the preponderance of probabilities.

Judgment is hereby entered for the plaintiff’s on all the reliefs.

The reasons for the above conclusion include;

- (1) That the disputed land was first acquired by the plaintiff’s father Opanin Yaw Nsiah.
- (2) That the said Opanin Yaw Nsiah farmed on same with his wife until he made of gift of same to the said wife and children who are now the plaintiff’s herein.
- (3) That the land has been in the possession of the plaintiffs until the 1<sup>st</sup> defendant herein started his trespassory acts.
- (4) That the claim by the 1<sup>st</sup> defendant that he inherited the disputed land from his late uncle Kofi Adiya is not supported by any evidence;
- (5) That the plaintiff proved their claims on the preponderance of probabilities and as required by law.

The following orders or declaration are hereby made;

- (1) The said disputed land described by the plaintiff herein in their particulars of claim is the property of the plaintiffs and they shall take possession of same.
- (2) An amount of GH¢2,000.00 is hereby awarded against the 1<sup>st</sup> defendant and for the plaintiffs as general damages for trespass.
- (3) The defendants, herein their assigns, heirs, workmen, descendants, labourers etc and anyone claiming through them (defendants) are henceforth restrained

from entering or dealing with the disputed land in any way or form as same is the property of the plaintiffs.

(4) Cost of GH¢1,000.00 is awarded against the 1<sup>st</sup> defendant and for the plaintiffs.

.....SGD.....

ISSAH ABDUL-WAHAB

(MAGISTRATE)