

IN THE DISTRICT COURT HELD AT AKIM OFOASE ON TUESDAY 7TH FEBRUARY,
2023 BEFORE H/W KEN. OKYERE-ABOAGYE AS MAGISTRATE.

SUIT No: ER/AF/DC/A1/12/22

AKUA ABREFI

v.

OSEI KWAKU

YAW EMMANUEL

JUDGMENT

On the 18th of May, 2022 Plaintiff commenced this action against Defendants seeking the following reliefs:

1. Declaration of title and recovery of possession of all that piece or parcel of farm land situate, lying at "Ebuabowo" on Akim Chia stool lands measuring seven (7) acres more or less bounded on all sides by the properties of Akosua Bonsah, Mr. Koomson and Abena Ntiamoah.
2. Damages of GHc10,000 for cutting Plaintiff's cocoa trees on the said land.
3. Perpetual injunction restraining Defendants, their assigns, privies, workmen, etc. from having anything to do with the said land mentioned supra.
4. Costs.

The summary of the subject matter of claim are that:

1. Plaintiff is a farmer and the great granddaughter of Abrewa Oforiwaa who acquired the disputed land at Akim Chia.
2. Defendants are family members and also farmers, resident at Akim Chia.
3. Plaintiff says she has the consent and concurrence of other siblings to initiate this action.
4. Plaintiff says the said land mentioned supra was acquired by Plaintiff's grandmother Abrewa Oforiwaa and that currently, Opanin Yaw Gyimah (Plaintiff's uncle) is the successor.
5. Plaintiff says Defendants has forcefully taken, cleared and cut down cocoa trees on the land without the consent of Plaintiff and her siblings.
6. Plaintiff says she summoned Defendants before the chief of Chia.
7. Plaintiff says that all efforts made to stop Defendants had proved futile.

8. Plaintiff says that Defendants are still on the land and prays for an injunction to restrain Defendants until the final determination of the suit and also prays for damages for trespass.
9. Wherefore Plaintiff sues Defendants jointly and severally as per her reliefs sought and endorsed on the writ of summons.

Defendants filed their statement of defence on the 29th of June, 2022 saying that they jointly and severally deny every material allegation of Plaintiff's statement of claim as if same were set out in extensor and denied seriatim.

1. Paragraphs 1 and 4 are partly admitted in that Plaintiff is a farmer, but the disputed land was not first cultivated by Abrewa Oforiwaa as alleged by Plaintiff.
2. Paragraph 2 of the subject matter of claim is admitted.
3. Paragraph 3 cannot be admitted or denied.
4. Paragraph 4 is partly admitted in that the disputed land was cultivated by Nana Asare Dua in its original state and not Abrewa Oforiwaa. Nana Yaw Gyimah also known as Yaw Pagne is a maternal uncle of Plaintiff.
5. Paragraphs 5 and 7 cannot be admitted in that Defendant had been on the land for 2 years and had planted plantain thereon which is now fruiting without any let or hindrance.
6. Paragraph 6 is admitted. Defendants aver that at the palace, the panel that 2nd Defendant should continue with his work after the uncle of Plaintiff gave evidence and said that he gave the said land to 2nd Defendant in his capacity as the head of family of Aduana Amoakowaa of Chia.
7. Paragraph 8 cannot be admitted or denied in that Defendants continued with the cultivation of plantain on the said land which is now fruiting after the ruling of the panel at the palace.
8. That Plaintiff's instant action is unmeritorious and cannot tell such palpable lies to throw dust in the eyes of the Court and will put Plaintiff to strict proof.
9. Defendants repeat paragraphs 1 to 8 of Plaintiff's statement of claim and counter claims follows:
 - a. GHc10,000 as general damages for 360 palm seedlings which was destroyed due to interim injunction by the queen mother of Chia pending the hearing of the summons by Plaintiff.
 - b. Costs.

The evidence in chief of Plaintiff, Akua Abrefi a farmer resident in Chia had it that she knows Defendants at Chia. According to Plaintiff, her grandmother Yaa Oforiwaa has a

land at a place known and called “Ebebuabowo” on Akim Chia stool lands of size six (6) poles more or less. The boundary neighbors are Akua Bansa, Mr. Koomson and a footpath. The last time a family member cultivated the said land was about five (5) years ago. Plaintiff continued that in May, 2022 she was passing by the said land where she noted that some people were clearing the land and upon enquiry, she noted that Defendants were the ones who had hired the people to clear the said land, but they didn’t confront Defendants for confirmation or otherwise.

During cross examination it came to light that one Nana Yaa who was sued together with Defendants had her name struck out from the suit because she was not on the land and she hadn’t contracted anyone to do anything on the said land.

The evidence of PW1, Beatrice Bansa a retired Trader resident at Chia had it that, she knows Plaintiff at Chia and also knows 1st Defendant at Chia, but knows 2nd Defendant at Ntronang. According to PW1, one Maame Yaa Oforiwaa from Adwafo came to live at Chia when she got married to one Appiah Ani. PW1 averred that the said Appiah Ani joined the Aduana clan so the Aduana family gave him a piece of land to cultivate with his wife. PW1 averred further that her mother Ama Buara shared common boundary with the disputed land located at “Ebuabowo” and the boundary owners are Kwadwo Fordjour, a footpath, Ama Buara again. After Maame Oforiwaa’s death, Maame Waawa took over the land, followed by Adwoa Donkor who cultivated it, then Adwoa’s daughter Kate Mensah and her husband Kwakye also cultivated cocoa. PW1 averred that when Kate Mensah died, Kwakye relocated, then Opanin Yaw Pagne who is the son of Oforiwaa also cultivated. PW1 claimed that the disputed land is not a family land but it was given to Maame Yaa Oforiwaa and husband and with this, Plaintiff closed her case.

The evidence of 1st Defendant, Osei Kwaku a farmer resident at Chia had it that he knows Plaintiff as a family member and also knows 2nd Defendant as his nephew. According to D1, his grandfather Asare Duah has a land at a place commonly known and called “Ebebuabowu” at Chia. Asare Duah and his wife Abrewa Korama cultivated the virgin forest of size 6-acres long time ago and that the boundary neighbors are Opanin Nyanse, Opanin Kwadua Koomson and Akua Aniwoo. They cultivated food crops and then one Maame Oforiwaa pleaded with Asare Duah to grant her a portion of his land to cultivate and feed therefrom so she was given a piece. Now when Asare Duah passed on, one Paul Korankye was the caretaker. Then when Paul Korankye also passed on, Opanin Yaw Gyimah took over and he has been on the land for about thirty (30) years but uncultivated so it looks like a forest. D1 averred that one Abena Frempomaa cultivated a portion but she was not allowed to continue by Opanin Yaw Gyimah for cultivating cocoa so the

cocoa trees planted by Abena Frempomaa are still present on the said land. D1 averred further that his grandmother Maame Afia Tawiah was a niece to Asare Duah, however, when they went to cultivate the land, Plaintiff had brought them to Court.

The evidence of 2nd Defendant, Emmanuel Yaw Opoku a herbalist resident at Ntronang had it that, he knows Plaintiff as an auntie and also knows 1st Defendant as an uncle. According to D2, his uncle Opanin Yaw Gyimah granted him a land at a place commonly known and called "Ebebuabowu" of size 6-acres on Akim Chia stool lands. This was about two (2) years ago and he cultivated the whole land with food crops, then Plaintiff herein summoned him before the chief at the palace and when the matter was heard, it was decided that D2 continue with his work on the land because Opanin Yaw Gyimah testified in his favor. D2 averred that he paid GHc200 and two (2) bottles of Schnapps to seal the agreement. Later he received summons to appear before this Court that he had destroyed Plaintiff's cocoa farm before cultivating the food crops which is not true. According to D2, the said area Plaintiff is referring to was granted to one Kate by Opanin Yaw Gyimah to cultivate food crops and not cocoa so Yaw Gyimah took over the land when Kate cultivated cocoa. D2 averred that he was told by Opanin Yaw Gyimah that it was Asare Duah who broke the virgin forest.

The evidence of DW1, Akua Manu a trader resident at Agona Swedru had it that she knows Plaintiff as a cousin, 1st Defendant as a half-brother and 2nd Defendant also as a cousin. According to DW1, her grandfather Asare Duah cultivated the virgin land with his wife Abena Korama and that the rest of the family were at Adwafo and he relocated to Chia. When Asare Dua passed on, one Paul Korankye succeeded him and when Paul Korankye passed on, Opanin Yaw Gyimah was made a caretaker of the land. DW1 averred that Opanin Asare Duah also had a half-sister called Yaa Oforiwaa and that Plaintiff herein and Opanin Yaw Gyimah are grandchildren of the said Yaa Oforiwaa. Now Opanin Yaw Gyimah looked for Emmanuel Opoku (D2 herein), who is a great grandchild of Asare Duah from Ntronang to come and cultivate the disputed land. Opanin Gyimah told D2 that one Abena Frimpomaa cultivated cocoa instead of food crops when he gave her the land so he stopped Abena from continuing with the cocoa farm. DW1 averred further that she later heard that Plaintiff had summoned D2 before the chiefs for cutting her cocoa trees on the disputed land, however, at the palace, D2 won the case, but the queen mother asked D2 to hold on until the final determination which made D2 loose most of the seedlings that he had bought. Later, D2 couldn't get any seedlings to buy so in 2022, he gave D1 some job to do on the land, which is the reason Plaintiff brought this action against them and with this, Defendants closed their case.

The issue before the Court for determination is whether or not Plaintiff herein is entitled to her claims:

On the first issue of declaration of title and recovery of possession of all that piece or parcel of farm land situate, lying at "Ebuabowo" on Akim Chia stool lands measuring seven (7) acres more or less bounded on all sides by the properties of Akosua Bansah, Mr. Koomson and Abena Ntiamoah:

This matter being a land suit, Plaintiff is expected to lead evidence in proof of her title. In the case of **Agyekum v. Amoah, Civil Appeal No. J4/59/2014, dated 13th April 2016 (unreported)**, it was held that in civil trials, the standard of proof is that of a balance of probabilities. See also **sections 11 (4) and 12 of the Evidence Act, 1975 (NRCD 323)** and the case of **Sarkodie v. FKA Co. Ltd. [2009] SCGLR 65, S.C. at holding 1.**

The evidence of Plaintiff was to the effect that her grandmother Yaa Oforiwaa has a land at a place known and called "Ebebuabowo" on Akim Chia stool lands of size six (6) poles more or less with boundary neighbors as Akua Bansa, Mr. Koomson and a footpath. The last time a family member cultivated the said land was about five (5) years ago. Plaintiff continued that in May, 2022 she noted that Defendants had entered the said land. Now the Court had expected Plaintiff to inform it when her said grandmother acquired the said land, how she acquired it and the activities that had gone on in the land until 2022 when she noted that Defendants had entered unto the land.

The evidence of PW1, Beatrice Bansa had it that one Maame Yaa Oforiwaa from Adwafo came to live at Chia when she got married to Appiah Ani. According to Beatrice, the said Appiah Ani joined the Aduana clan so the Aduana family gave him a piece of land to cultivate with his wife. PW1 averred further that her mother Ama Buara's land shared common boundary with the disputed land located at "Ebuabowo" and the boundary owners are Kwadwo Fordjour, a footpath, Ama Buara again. After Maame Oforiwaa's death, Maame Waawa took over the land, followed by Adwoa Donkor who cultivated it, then Adwoa's daughter Kate Mensah and her husband Kwakye also cultivated cocoa. PW1 averred that when Kate Mensah died, Kwakye relocated, then Opanin Yaw Pagne alias Yaw Gyimah who is the son of Oforiwaa also cultivated the said land.

Now from the evidence of PW1, Appiah Ani joined the Aduana family, out of which he was given the said land by the Aduana family to cultivate which he did with his wife Maame Yaa Oforiwaa. The said Maame Yaa Oforiwaa was not a native of Chia, but she relocated to Chia from Adwafo after she had gotten married to Appiah Ani. Does that mean that the disputed land belongs to Oforiwaa or Appiah Ani? Your guess is as good

as mine. The boundary neighbors as mentioned by Beatrice Bansa are Ama Buara, Kwadwo Fordjour, Ama Buara again and a footpath. Beatrice Bansa claimed that after the death of Yaa Oforiwaa, Maame Waawaa, Adwoa Donkor, Kate Mensah and then Opanin Yaw Gyimah who is the son of Yaa Oforiwaa cultivated the disputed land in succession. Now the said Opanin Yaw Gyimah who is a known user of this Court didn't go out when all witnesses were ordered by the Court to stay out during Plaintiff's evidence, so the Court enquired from him whether he is a witness in this suit, but he declined by saying "I am not a witness". The Court is wondering from the evidence on record that should Opanin Yaw Gyimah who is the head of family to the parties and also a vital witness in the suit, why would he decline to be a witness?

D1's (Osei Kwaku) evidence was to the effect that his grandfather Asare Duah broke the virginity of the disputed land with his wife Abrewa Korama and that Maame Yaa Oforiwaa who was a sister to Asare Duah pleaded with Asare Duah to grant her a piece of the land to cultivate food crops and that after the death of Asare Duah, one Paul Korankye was the caretaker, followed by Opanin Yaw Gyimah in succession, however, Yaw Gyimah didn't cultivate the disputed land for about thirty (30) years and it has become a forest.

D2's (Emmanuel Yaw Opoku) evidence was to the effect that Opanin Yaw Gyimah who is his uncle gave him the disputed land to cultivate two years ago, however, Plaintiff herein summoned him at the palace where Opanin Yaw Gyimah gave evidence in his favor so he was asked to continue with his work, but Plaintiff had brought them to this Court that they had destroyed her cocoa trees on the land.

Apart from certainty in the land claimed, one of the conditions for successfully litigating a piece of land is possession and Plaintiff herein had not been in possession of the disputed land because she indeed told the Court that the last time a family member cultivated the said land was five years ago and indeed it was her and the said cocoa trees were not cultivated by her. As already stated, the said Opanin Yaw Gyimah was in Court on the day Plaintiff gave evidence to this Court, but he refused or declined to testify in this suit. The Court believes that the truth or otherwise of this suit lies in the bosom of Opanin Yaw Gyimah and that either he had advised Plaintiff to refrain from bringing this suit to Court to no avail, he decided to stay out of it.

The Court is not convinced with the evidence of Plaintiff herein because she was not able to prove that she has possession of the disputed land to grant her judgment in this suit, so the entire application of Plaintiff is dismissed with costs of GHc400 awarded against Plaintiff for Defendants.

Payment is to be made into Court effective 21 February, 2023.

H/W Ken. Okyere-Aboagye

(District Magistrate).