

IN THE DISTRICT COURT SITTING AT ASAMANKESE ON THE 5<sup>TH</sup> DAY OF JUNE, 2023, BEFORE HIS WORSHIP GEORGE DAVIS KWASI OFORI (MR) – DISTRICT MAGISTRATE

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SUIT No:A1/13/23

BENJAMIN AMO BIMPONG, PER HIS LAWFUL  
ATTORNEY REV. EMMANUEL BIMPONG } ..... PLAINTIFF

VRS.

KWABENA AGYAPONG ..... DEFENDANT

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### JUDGEMENT

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#### CLAIM:

- a) The plaintiff's claim against the defendant is for Declaration of right of title and recovery of possession to all that piece or parcel of land situate, lying and being at a place commonly known and called Boafu near Odjardeh and bounded on one side by the property of Mr. Otoo; one side by the property of the plaintiff herein and the other side by the Asamankese-Akroso motor road, and measuring one and half acres more or less which said land the defendant had unlawfully cultivated into a cocoa plantation without the prior knowledge and consent of the plaintiff contrary to law.
- b) Perpetual injunction to restrain the defendant, his agents, unknown labourers from further entering upon the said land
- c) Orders as to costs.

#### SUMMARY OF PLAINTIFF'S EVIDENCE

It is the plaintiff's case that the land part of which is in dispute was originally acquired in its virgin state by their late father Joseph Anane Bimpong who also

gifted about three (3) acres to his wife and the mother of the plaintiff and plaintiff's attorney and siblings, who performed the customary "aseda" for the gift.

That his mother gave the said three (3) acres to one Kwasi Tawiah to cultivate cocoa on abunu tenancy in the 1970's but that cocoa has since withered, ending that abunu tenancy agreement.

That their mother died in the early 1990's and his elder brother Kwasi Birah was appointed customary successor. That Kwasi Birah in 1993 gave out the three (3) acres to the defendant to cultivate cocoa and oil palm on abunu tenancy, in 1993, which he later did, and the cocoa was shared upon maturity. That the proceeds of the oil palm were being shared between the defendant and Kwasi Birah until Kwasi Birah's death, after which he he was appointed customary successor.

That the defendant uprooted the palm trees and used the land to cultivate cocoa without the knowledge and consent of the plaintiff, hence this suit, praying the Court for the reliefs endorsed on the writ of summons.

That it is the land used by the defendant to cultivate the new cocoa after uprooting the oil palm trees that is the subject of this dispute, which measures about 1½ acres. The plaintiff did not call any witness, neither did he tender any judgment in evidence.

#### SUMMARY OF THE DEFENDANT'S CASE:

It is his case that in 1990, he was made an abunu tenant by one Kwasi Birah (deceased) of the latter's 7.8 acres cocoa farm. That he rendered accounts of the farm to Kwasi Birah until 1997 when Kwasi Birah died.

That the plaintiff was appointed the customary successor of Kwasi Birah and he began to share the proceeds with him until he asked him (plaintiff) to prepare a document to show that he (defendant) was his tenant. That when the plaintiff refused, he stopped sharing the proceeds with him, and was giving it to Kwasi Birah's children. That was in 2000. That in 2008, the plaintiff sued him at the Oda District Court on the subject matter, and the Court ordered them to share the farm into two equal parts, which they did and since then, i.e about 15 years before this action, he has been in possession of his share, while the defendant has also been in possession of his.

That he never planted any oil palm except cocoa. That this action is frivolous. The defendant called one witness to support his claim.

#### ISSUES FOR DETERMINATION:

From all the evidence before me, the issues that came up for determination are:

- a) Whether or not, apart from the cocoa that the plaintiff and defendant shared over fifteen (15) years ago, the defendant has planted new cocoa on the plaintiff's land, the subject of this dispute;
- b) Whether or not the plaintiff is entitled to his claim.

To succeed, the onus lies on the plaintiff to lead sufficient evidence to prove that, on a balance of probabilities, his evidence is more reasonably probable or carries more probative weight than that of the defendant's which onus may also shift on the defendant. See Section 10, 11 and 12 of The Evidence Act 1975 (NRCD 323);

Adwubeng vrs Domfeh [1996-1997] SC GLR 660, Fosua and Adu Poku vs Adu Poku Mensah [2009]SC GLR 310, Jass Co Ltd vrs. Appau [2009] SC GLR 265.

In the case of Yehans International Ltd vrs. Martey Tsuru Family and another [2019-2020], the Supreme Court stated that in order to succeed in an action for declaration of title to land, the claimant must prove three (3) elements, namely 1) root of title (2) Mode of acquisition and (3) various acts of possession over the land. See also Ago Sai and others vs Kpobi Tetteh Tsuru III [2010] SC GLR 762.

It is uncontroverted that the land, part of which is in dispute originally belonged to the mother of the plaintiff and his lawful attorney and their siblings. It is also not controverted that the defendant is an abunu tenant for the plaintiff. What is in controversy is whether or not after the defendant had shared the cocoa cultivated with the plaintiff in accordance with their abunu tenancy agreement, he added more land by annexing the plaintiff's land not originally cultivated into cocoa by him (defendant) and making a new cocoa farm for himself alone to the disadvantage of the plaintiff and his family.

It is trite law that in abunu tenancy agreements, it is the crops cultivated by the tenant that are shared and not the land. That any time the crops wither, the land reverts to the landlord. See Agbloee II vs. Sappor (1947) 12 W.ACA 187 at page 190.

It is the plaintiff's case that the defendant cultivated both cocoa and oil palm on abunu tenancy basis for his brother Kwasi Birah and was sharing the proceeds with him upon maturity. That they shared the cocoa in 2008 ( not controverted) but not the oil palm. That the defendant felled the palm trees and turned that land into a cocoa farm and usurped it, which is the root cause of this dispute.

The defendant on the other hand denied that he planted oil palm. That all he planted were cocoa in 1993 which cocoa have been shared between him and the plaintiff in 2008 as ordered by the Oda District Court. The defendant's evidence was corroborated by that of his only witness. But neither of the parties, after mentioning in their respective evidence that the subject matter was subject of dispute before the Oda District Court tendered in evidence the judgment of that Court in respect of the dispute and how it was determined or resolved.

Therefore, in order to do justice, I visited locus where I made the following observations:

- 1) The land in dispute is between 1 ½ and 2 acres.
- 2) There were remnants of uprooted oil palm trees, about five (5) of them counted at the cleared areas;
- 3) Part of the disputed area is covered with grass and bush without any cocoa trees. The other part is covered with cocoa aged between seven (7) to nine (9) years with my experience as cocoa farmer myself.
- 4) The area in dispute generally lies or is situate to the right of the main cocoa farm shared at the right hand side of the Akroso-Asamankese road, with a very small portion attached to the older cocoa farm shared on the left side of the Asamankese-Akroso road.
- 5) The plaintiff's share does not have any young cocoa trees on the farm.

From these observations, it is evident that apart from the older cocoa which the parties shared in 2008 (is over 15 years ago according to their own evidence), the defendant cultivated a relatively new farm on another portion of the plaintiff's land

which in my opinion was either secondary forest or with oil palm trees and added it to his share, which is unlawful, and contrary to abunu tenancy agreements.

Assuming there were no cocoa or palm trees on that area, the defendant had no right to grow new trees because that is contrary to abunu tenancy agreements. He does not own the land. It is only the crops that he owes. He was therefore forbidden from growing new trees on that portion.

From all the evidence before me and my evaluation of same, I find as a fact that the defendant is an abunu tenant for the plaintiff's family. I also find as a fact that they shared the cocoa cultivated by the defendant in 2008, after which the defendant planted new cocoa on land which the plaintiff claimed was originally covered by oil palm but which the defendant disputed. Be that as it may, the cocoa on the disputed land is factually younger than the older cocoa trees shared in 2008. It is also a fact that the disputed area is between 1 ½ or 2 acres.

From those findings, and my evaluation of the evidence, it is my opinion that the weight of evidence overwhelmingly favours the plaintiff because the area in dispute is about the same size derented by the plaintiff, as observed by the Court, and also for the reason that there are no cocoa trees at some portions. And the portions with cocoa trees have cocoa far younger than the older cocoa trees shared.

For this reason, I enter judgment for the plaintiff and hereby declare title in the disputed area for the plaintiff. The defendant, his agents, assigns, labourers and all those who claim interest in the disputed area through the defendant are hereby perpetually enjoined from going onto the disputed area, which the plaintiff puts at about 1 ½.

The plaintiff is therefore enjoined to employ the appropriate processes to recover possession and the Registrar of the Court is ordered to assist him in this regard. The Registrar is ordered to obtain the service of a surveyor to carve the disputed area for the plaintiff i.e the area covered by the newer or younger cocoa trees attached to the older cocoa trees already shared and the entire farmland across the road.

Costs of Gh¢1,599.00 awarded against the defendant.

(SGD)  
H/W GEORGE DAVIS KWASI OFORI  
(MAGISTRATE)  
5/6/23