

IN THE DISTRICT COURT HELD AT AKIM OFOASE ON THURSDAY 8<sup>TH</sup> MARCH,  
2023 BEFORE H/W KEN. OKYERE-ABOAGYE AS MAGISTRATE.

SUIT No: ER/AF/DC/A11/2/23

DAVID ADJEI KODIE

v.

KWAME ASIEDU

JUDGMENT

On the 4<sup>th</sup> of September, 2022 Plaintiff commenced this action against Defendant seeking the following reliefs:

1. An order of the Court for Defendant to account for 5-acres palm plantation harvested from Plaintiff's farm without the consent of Plaintiff from June to August, 2022 or in lieu Plaintiff claims the sum of GHc4,050.
2. GHc410 being incidental expenses incurred by Plaintiff at the chief's palace.
3. Costs

Defendant pleaded not liable to all the claims of Plaintiff.

The summary of the subject matter of claim are that:

1. Plaintiff is a farmer resident at Akim Brenase whilst Defendant is a farmer/Landlord and also resident at Akim Brenase.
2. Plaintiff says that about seventeen (17) years ago he entered into an agreement with Defendants family members for the cultivation of palm plantation on abunu basis and when the palm trees started fruiting, they all passed on, so the principal member of the family appointed Defendant to take control of their half share since the farm had been divided into two equal portions.
3. Plaintiff says that about three months ago, one Kwaku Peter visited the said farm and saw Defendant harvesting palm fruits without the consent of Plaintiff.
4. Plaintiff says he reported the matter to the Brenase chief and when it was heard, Defendant was found liable, but incurred GHc410 as summons fee.
5. Plaintiff says Defendant had refused to stop harvesting upon several warnings.
6. Wherefore claims as per the endorsed writ of summons.

The evidence-in-chief of Plaintiff, David Adjei Kodie a farmer resident at Akim Brenase had it that he knows Defendant at Brenase as a member of Asona clan. According to Plaintiff, in 2005 he took a land from Kofi Osei alias Kofi Gare, Kwabena Anane and Esi Ahenkorah at Beposo on Akim Brenase stool lands of size 10.5-acres. The boundary owners are one Baiden, Kofi Sah, Fuseini, Asantewaa, Yaw Agyapong and Yaw Nyarko to cultivate palm plantation on abunu terms and that at the end of the useful life, the palm trees would be shared equally. Plaintiff claimed that he started harvesting the palm fruits in 2010, but by then Kofi Osei alias Kofi Gare and Kwabena Anane had passed on in 2008 and 2007 respectively. Plaintiff averred that he was harvesting same until after six (6) years that Esi Ahenkorah asked him to account for the proceeds even though he told her when the fruits were ready. Now Kwame Asiedu, Kofi Mmabre and Kofi Obeng came to him with Esi Ahenkorah where he accounted for the proceeds and gave them GHc2,400 after deducting GHc300 which Esi Ahenkorah had come for earlier. Then a month later, Kofi Mmabre, Kwame Asiedu, Kwabena Osei and one Kofi came to him for a loan of GHc2,300 which he gave them and they agreed on five (5) years mortgage period of the same palm plantation and the said agreement elapsed in January, 2022. Plaintiff averred that, at the end of January, 2022 Defendant told Plaintiff that Kofi Mmabre had sent him to Plaintiff for them to harvest and share which they did on abunu terms for three (3) months, then they shared the palm trees in May, 2022 where they both harvested theirs. On the 5<sup>th</sup> of June, 2022 one Kwaku Peter saw Defendant harvesting Plaintiff's palm fruits so Plaintiff went to Defendant three (3) day later with Kwabena Mensah who confirmed harvesting Plaintiff's palm fruits. Plaintiff averred that he sent the matter to the palace but Defendant was still harvesting his portion for which reason he prayed the chiefs to allow him bring the matter to Court for redress. Last but not least, Plaintiff averred that he harvested his portion once and realized GHc1,600. Plaintiff tendered into evidence seven (7) pictures of the older portion which was admitted without objection and marked as exhibit "A" series and seven (7) pictures of the younger portion which was admitted without objection and marked as exhibit "B" series.

The evidence of PW1, Peter Akuoku a farmer resident at Brenase had it that he knows Plaintiff as a friend and also knows Defendant at Brenase. According to PW1, he works as a palm fruit harvester for Plaintiff so in 2022, Plaintiff herein called him to say that he is to share the farm with Defendant so he should come along; also present was one Sammy. PW1 claimed that a portion of the farm is such that when the river Pra overflows its banks, it floods that area of about 1.5-acres in size. This has made a portion of the palm trees of size about 5-acres grown better than the flooded portion, so they shared that portion into two (2) equal parts and then shared the younger ones also of size 5-acres into

two (2). PW1 averred that Defendant was asked to take a portion on the dry land first which he did, then Plaintiff asked to choose the younger area first also which Defendant obliged, then Plaintiff did accordingly. PW1 averred further that, he later met Defendant who told him that the farm wasn't shred well because Defendant should have chosen the younger portion first before Plaintiff. According to PW1, Defendant told later that he was going to harvest the palm fruits and noted that he had indeed harvested and he entered the farm because he was around and met one Abena Anima who was collecting the fruits and on enquiry, she said she came to the farm with Defendant, then I told her that the area they had harvested is for Plaintiff so he informed Plaintiff about it who also confirmed same. There happened to be another harvest at a later date, but he doesn't know who did that. Plaintiff sent the matter to Brenase palace for settlement and some elders were elected to go with them and on the said date, they noted that someone had harvested again for the third time which is the reason for the matter being in Court.

The evidence of Defendant, Kwame Asiedu a carpenter resident at Brenase had it that he knows Plaintiff as a tenant farmer to his grandfather Kofi Osei alias Kofi Gare. According to Defendant, his grandfather Kofi Osei alias Kofi Gare granted the said land to Plaintiff at Beposo on Akim Brenase stool lands of size 10.5-acres for the cultivation of palm plantation in 2005. When the palm trees started fruiting, his grandfather had passed on and he was succeeded by Kofi Awudu alias Kofi Mmabre so in 2017, Kofi Awudu alias Mmabre called Plaintiff and asked that he account for the share proceeds to him. Defendant averred that Plaintiff accounted for GHc6,060 where Plaintiff stated that the terms of the agreement was abusa, so he divided the amount into three (3) and gave Awudu alias Mmabre GHc2,020. Defendant averred further that, later that year, his family needed GHc2,300 to settle a chieftaincy issue so his uncle Awudu alias Mmabre mortgaged their share proceeds from the farm to Plaintiff for five (5) years from 17<sup>th</sup> February, 2017 for GHc2,300. The mortgaged period expired this February, 2022 so he went with Plaintiff where they harvested the palm fruits and shared into two (2) parts on the farm and also shared the costs. This they did on five (5) occasions, then Plaintiff asked that they share the farm instead and this was in June 2022. Defendant averred that his uncle agreed where he went with Kofi Sammy and Plaintiff came with Kwame Peter and Kwabena Mensah. Defendant continued that a stream crosses the farm so they shared a dry portion and he chose first and on the other portion he should have chosen first again, but Plaintiff asked to choose which I eventually obliged him, but the portion he chose happened to be a continuation of Defendants first choice which made it a cross pattern for each party. Defendant averred that when he informed his uncle at home, the uncle objected to the cross pattern sharing, where Awudu alias Mmabre spoke to Plaintiff on

phone complaining about the sharing but to no avail. Defendant averred further that Plaintiff later harvested his crossed portion which made Defendant also harvest one line later and not crossed as expected. Plaintiff sent the matter to the chief's palace but it wasn't resolved and he had brought it to this Court. Defendant averred that he had harvested Plaintiff's portion twice Defendant tendered into evidence four (4) pictures which were admitted without objection and marked as exhibit "1" series.

The evidence of DW1, Foster Ofori a farmer resident at Brenase had it that he knows Plaintiff at Brenase and also knows Defendant as a family member. According to DW1, he usually harvests palm fruits as a business and Defendant called him about three months ago to harvest his palm fruits on his farm at Beposo. When he went, Defendant showed him the boundary of the farm and though he harvested the palm fruits, he didn't count the quantity of bunches and he didn't also check the size of the farm.

The evidence of DW2, Kwaku Ben a farmer resident at Brenase had it that he knows the parties at Brenase. According to DW2, he was home one morning when Defendant called him to come carry his palm fruits at Beposo on Brenase stool lands so he went with Defendant and one Kwabena Foster who harvested the fruits, then DW2 carried them. DW2 averred that Defendant showed Foster the first portion on the land to harvest which Foster did, then DW2 carried them away as contracted and they all went home afterwards and with this, Defendant closed his case.

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

For the first claim, Plaintiff is praying the Court to compel Defendant to account for the palm fruits he had harvested from Plaintiff's 5-acre palm plantation from June to August of 2022 or in lieu of that, Plaintiff claims GHc4,050:

From the evidence on record, the Court is convinced that Plaintiff is a tenant farmer on Defendant's family land and by reason of flooding during the rainy season, a portion of the palm plantation's growth, which was cultivated by Plaintiff herein is impeded because of excess water. This is confirmed with the pictures parties tendered into evidence which were admitted into evidence and marked as exhibit "A" series and exhibit "1" series respectively. Ideally, parties would have shared the whole farm into two (2) equal portions for each party to have a share, but by reason of the stunted growth in some portions of the farm, parties shared the dry area first where Defendant chose a portion first before Plaintiff took the other; then the stunted area was also shared into two (2) where Plaintiff asked to choose first which Defendant obliged, but after Defendant

had gone to home to inform his uncle, the said uncle didn't like the crossed pattern that sharing had produced and this is the basis for the conflict since Plaintiff also refused to hand over what he had chosen from the stunted area to Defendant. The Court had noted that it is not the fault of any party that the excess water is flowing on the part of the farm, but an act of God, so one party cannot be heard to say that he should have chosen from the stunted area first as well, seeking to put Plaintiff at a disadvantage in both areas of the farm, but rather it should be a shared responsibility.

The Court therefore affirms the crossed sharing pattern of the parties as long as each party has earmarked his portion appropriately with boundary plants. Now Plaintiff was able to prove that Defendant was the one who harvested his portion after the sharing, but he was unable to prove to the Court the number of times Defendant herein had harvested the palm fruits from his portion. Defendant, in his evidence told the Court that he had harvested twice from the disputed portion. When parties were ordered by the Court to harvested together when the fruits were ready, they realized GHc812 which sum was deposited into Court. Now using this figure as the yardstick, the Court presupposes that Defendant must have realized GHc1,624 out of the two (2) harvests that he made from the disputed area.

From the totality of the evidence, I hereby enter judgment in favor of Plaintiff against Defendant in the sum of GHc1,624.

Plaintiff is hereby ordered to collect the GHc812 already paid into Court by parties.

Costs of GHc810 including incidental expenses at the palace of GHc410 awarded against Defendant which sum is to be paid immediately.

All payments are to be made into Court.

H/W Ken. Okyere-Aboagye

(District Magistrate).