

IN THE DISTRICT COURT HELD AT AKIM OFOASE ON THURSDAY 9TH MARCH,
2023 BEFORE H/W KEN. OKYERE-ABOAGYE AS MAGISTRATE.

SUIT No: ER/AF/DC/A11/7/2023

DIANA FRIMPONG

v.

KWAKU AGYEKUM

AKOSUA SUNKWA

OPANIN OFFEI

JUDGMENT

On the 7th of November, 2022 Plaintiff commenced this action against Defendants seeking the following reliefs:

1. Plaintiff jointly and severally sue Defendants for an order of the Court to evict Defendants from Plaintiff's 6-acres oil palm plantation which is located at a place commonly known and called "Ntatiem" on Akim Kotokuom stool lands sharing common boundaries with the properties of Opanin Nyamekye, Kofi Bio, Opanin Anto and a tertiary road which Defendants have forcefully taken over and harvesting same without the consent and authority of Plaintiff. All efforts made for Defendants to vacate the farm have proved futile.
2. An order of the Court for Defendants to account for the palm fruits harvested on the 15th of October, 2022 and the 6th of November, 2022 or in lieu of that, Plaintiff claims GHc2,500 as the cost of the produce.
3. An order for interim injunction restraining the Defendants by themselves, their assigns, workmen, agents, representatives, privies etc. from having anything to do with the said farm mentioned supra until the final determination of the suit.
4. Perpetual injunction restraining the Defendants by themselves, their assigns, workmen, agents, representatives, privies etc. from interfering with Plaintiff's farm.
5. Costs.

Defendants pleaded not liable to all the claims of Plaintiff.

The summary of the subject matter of claim are that:

Plaintiff and Defendants are all farmers and are residents of Akim Kotokuom.

Plaintiff says she and her husband Kwame Okyere Jackson deceased cultivated 6-acres of palm plantation at "Ntatiem" on Akim Kotokuom stool lands which is the property of Opanin Kwadwo Grant, Maame Tobia and Maame Yaa Mansa who jointly granted the said land for the cultivation of the oil palm.

Plaintiff says that her husband passed on about 5 months ago and after the funeral rites on the 8th of October, 2022 Defendants who are her husband's nephews and have taken over the said 6-acre palm plantation without Plaintiff's consent and authority and are harvesting same with impunity for their own use and to the detriment of Plaintiff and her children and therefore pray the Court for redress.

Wherefore Plaintiff sues Defendants jointly and severally as per her reliefs sought and endorsed on the writ of summons.

The evidence -in-chief of Plaintiff, Diana Frimpong a farmer resident at Akim Kotokuom had it that she knows D1 and D3 and nephews of her late husband and D2 also as a niece of her late husband. According to Plaintiff her late husband Opanin Kwame Okyere had taken a piece of land from his siblings Opanin Kwadwo Grant, Maame Tobia and Maame Yaa Alice who is the daughter of Maame Yaa Mansa in 2005 of size 6-acres for the cultivation of oil palm plantation on "abusa" basis, to wit: 2/3 portion to her husband and 1/3 portion to the land owners. The said land was the property of one Agya Asua who's the father of Kwadwo Grant and the others. Plaintiff averred that after the funeral rites of her late husband, Defendants herein went to harvest the palm fruits on two occasions without her consent. Plaintiff averred further that, she told Defendants that the said land owners are alive. Plaintiff averred that when she harvested the palm fruits, she realized GHc1,500 and then Ghc1,800 but she had forgotten the subsequent amounts. Last but not least, Plaintiff claimed that she was instructed by one uncle Nimo who is an uncle of her late husband to give the money to the 1st Defendant so she had so far given GHc3,200 to the 1st Defendant in September, 2022.

The evidence of PW1, Opanin Kwasi Agyei a farmer resident at Kotokuom had it that he knows Plaintiff as his uncle's wife and also knows Defendants as cousins. According to PW1, his grandfather Opanin Kwasi Asua came to Kotokuom to harvest timber during President Nkrumah's era where he noticed a virgin land at "Ntatiem". He then cultivated the virgin land with the boundary neighbors being Opanin Kofi Bio, Opanin Anto, Opanin Nyamekye and a stream which he claimed he had forgotten its name. PW1 continued that Kwasi Asua married one Afia Fofie who already had two issues, to wit: Adwoa Mosi and Kwame Okyere. Kwasi Asua and Afia Fofie gave birth to Abena Tobia and Kwadwo Grant. When Kwasi Asua passed on, Kwadwo Grant cultivated cocoa on

the said land of size 6-acres, then later the cocoa farm was destroyed by fire outbreak. Then Kwame Okyere cultivated palm plantation thereon in 2005 with his wife who is Plaintiff herein, Esi Quansah who was Kwame Okyere's second wife and PW1. Now Kwasi Asua also married one Kramo and they had an issue called Yaa Mansa. PW1 averred that Kwame Okyere started harvesting the palm fruits in 2013 and he was sharing with Grant and Tobia because by then, Yaa Mansa had passed on. Now Kwame Okyere passed on in June 2022 and he was succeeded by one Kofi Nimo, so PW1 went to find out about his mother Tobia's share of the proceeds, but he was informed that the proceeds had been deposited into a bank account at Ofoase and at the time, his mother was sick and Plaintiff herein was also not getting any share proceeds, which is the reason the matter is in Court and with this, Plaintiff closed her case.

The evidence of Defendants was given by the 1st Defendant who was elected to give evidence for himself and also on behalf of the rest of Defendants. The Defendant gave his name as Kwaku Agyekum, a farmer resident at Kotokuom and he had it that he knows Plaintiff as his uncle's wife and also knows D2 and D3 as his siblings. According to D1, his grandmother Afia Fofie has a land at a place commonly known and called "Ntatiem" on Akim Kotokuom stool lands, sharing boundaries with Opanin Kwabena Krah, Opanin Kwadwo Nyamekye, Opanin Kofi Bio and Opanin Atta Kwabena alias "Manas" and that the said land is of size 6-acres. The said land was cultivated by one Ayim and Kwame Okyere before they both travelled out of the town. It was left with Opanin Kwadwo Grant who cultivated cocoa on a portion; thereafter Ayim and Kwame Okyere returned home where Ayim passed on not too long after. D1 continued that the cocoa farm cultivated by Grant got burnt by fire, then Kwame Okyere cultivated palm plantation thereon. In 2021, Opanin Grant went to Opanin Kwame Okyere for money but Okyere declined saying that Grant gave no one a share from the cocoa farm, then in June 2022, Kwame Okyere also passed on, where uncle Kofi Nimo succeeded Kwame Okyere so Nimo suggested that the palm plantation be shared into three (3) equal parts: 1/3 portion to Plaintiff, 1/3 portion to Tobia and Grant and the other 1/3 portion be saved for the family upkeep, but Plaintiff herein disagreed so they couldn't do it. 1st Defendant averred that he had to harvest the fruits because it was ripe and going bad which is the reason for the matter brought to Court by Plaintiff. D1 averred further that, Plaintiff herein is the wife of the late Kwame Okyere and that Kwame Okyere and Adwoa Mosi were gifted a piece or parcel of land at "FuForso" of size 7-acres and Kwame Okyere cultivated palm plantation thereon for Plaintiff. For this reason, D1 claimed he decided to take charge of the farm at "Ntatiem" and that Plaintiff stated that the farm should be shared into two and not three portions and with this, Defendants closed their case.

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

On the first relief where Plaintiff is seeking an order of the Court to evict Defendants from Plaintiff's 6-acres oil palm plantation which is located at a place commonly known and called "Ntatiem" on Akim Kotokuom stool lands sharing common boundaries with the properties of Opanin Nyamekye, Kofi Bio, Opanin Anto and a tertiary road which Defendants have forcefully taken over and harvesting same without the consent and authority of Plaintiff:

The Court noted from the evidence-in-chief of Plaintiff that her late husband was granted the said 6-acre parcel of land by Opanin Grant, Maame Tobia and Yaa Alice who is the daughter of Maame Yaa Mansa to cultivate oil palm plantation on "abusa" terms. This information is plain and simple and it doesn't suggest in any form that Plaintiff herein is litigating the 6-acre land. Plaintiff herein is saying that after the demise of her husband, Defendants led by Opanin Kwaku Agyekum had taken over the farm in wanton disrespect to Plaintiff and are harvesting the palm fruits without Plaintiff's consent and authority.

The evidence of Defendants which was given by the 1st Defendant is not disputing the fact that it was the late Kwame Okyere who cultivated the palm plantation. D1 mentioned that he took charge of the farm because the late Kwame Okyere and Adwoa Mosi had been gifted a 7-acre parcel of land at "Fuforso" which Kwame Okyere had cultivated into oil palm plantation for Plaintiff herein and also acted on the instructions of Opanin Kofi Nimo who is the customary successor to the late Kwame Okyere to give 1/3 portion of the share proceeds to Plaintiff, 1/3 portion to Tobia and Grant and the remaining 1/3 portion be saved for the family upkeep. The terms of the "abusa" agreement is such that 1/3 portion of the proceeds go to the tenant farmer, 1/3 portion goes to the land owners and the final 1/3 portion goes to the tenant farmer for the maintenance of the farm. Now under the **Interstate Succession Act 1985, PNDC Law 111** when a person dies interstate and that person is survived by a spouse and children, then it is the spouse and children who inherit the properties of the deceased and not the customary successor, so Opanin Kofi Nimo has no business issuing instructions as to what happens to the proceeds of the oil palm plantation. Should the parties decide to end the "abusa" agreement, then the farm should be shared into two (2) equal portions for each party to maintain his share. In this case the land owners and the surviving spouse and children of the late Opanin Kwame Okyere. From the totality of the evidence on record, I end this judgment by entering judgment in favor of Plaintiff against Defendants not to evict Defendants from

the farm, but that Plaintiff herein who is the surviving spouse of the late Opanin Kwame Okyere and children have a half share of the oil palm plantation at "Ntatiem" on Akim Kotokuom stool lands.

Plaintiff informed the Court that she had given GHc3,200 to the 1st Defendant on the instructions of Opanin Kofi Nimo which D1 confirmed. In fact, this sum and subsequent harvests and sale of the palm fruits by the parties had been deposited into Court totaling GHc17,020.

ORDERS

1. Parties are ordered to share the oil palm plantation at "Ntatiem" into two (2) equal portions for Plaintiff herein to have a half share and the land owners to also have a half share.
2. Plaintiff is ordered to vacate the disputed land after the useful life of the palm trees on her husband's portion.
3. Costs of GHc300 awarded against Defendants which sum is to be paid into Court for Plaintiff herein.
4. The total sum of GHc17,020 deposited into Court is to be shared into two (2) for Plaintiff to have GHc8,510 and Defendants to have GHc8,510 less GHc300 costs awarded against them.
5. Plaintiff herein is entitled to GHc8,810
6. Defendants are entitled to GHc8,210.

H/W Ken Okyere-Aboagye

(District Magistrate).