

IN THE DISTRICT COURT HELD AT BEREKUM ON TUESDAY THE 2<sup>ND</sup> DAY OF MAY, 2023 BEFORE HIS WORSHIP AUGUSTINE AKUSA-AM DISTRICT MAGISTRATE

SUIT NO. A1/14/2021

ATTAH BERNARD

VRS:

1. J.B. SAMLE DAGARTI
2. MMESSEGE ANSOROKUM

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

The plaintiff filed the instant suit against the defendants jointly and severally for

*(a) A declaration that "TAIN TWO" forest reserve compartments 200, 223 and 222 being at a place commonly known and called "Farm 36 Antokrom" on the Berekum stool lands and bounded by the properties of Antokrom, compartment 201 and River Tain is the property of the plaintiff.*

*(b) An order of the court to restrain the defendants, their agents and anyone claiming through them from entering the said forest to cut teak trees.*

The defendants' repudiated liability and trial commenced on 24/01/22.

The case of the plaintiff is that he is a Timber contractor who operates under the business name ATBED ENTERPRISE which is registered under the Laws of Ghana.

The plaintiff averred that in the year 2001, the government launched the National Forest Development Programme with the aim of planting trees in degraded forest reserves caused by several destructive factors like bushfires, illegal felling of trees etc.

In line with this policy, the Forest Services Division (FSD) of the Forestry Commission, released a list of degraded Forest Reserves including the one in issue.

Forest Services Division therefore invited interested persons and entities to apply for plantations in the degraded forest for the purpose of planting teak trees which upon maturity shall be shared with Forest Services Division in terms of benefit sharing agreement between a concessionaire and the government.

The plaintiff averred that in 2002, he thus applied to the Forest Services Division for a concession in the Tain II Forest Reserve and he was given compartments 200, 222 and 223 which covers an area of 250 hectares.

He explained that he engaged the local people including the defendants and they planted teak seedlings and by the year 2017, the trees had matured and to his surprise the defendants herein unlawfully entered the concession and began felling some of the teak trees. All attempts to stop the defendants from their unlawful conduct have been futile.

The plaintiff corroborated his evidence with several documents. Some of these documents are:

*(a) Exhibit A – A letter of recommendation from the Regional Forest Services Division to the National Head Quarters*

*(b) Exhibits B1 & B2:- Approval letter and a site plan granted to him.*

*(c) Exhibit C – A performance update report.*

*(d) Exhibit D – A letter from the Forest Services Division requiring him to enter into a lease benefit agreement with his grantor.*

*(e) Exhibit E1 – E4 copies of invoices, maps and receipts of payments made to the Forest Services Division*

The case of the defendants as gathered from their joint evidence in chief is that they, together with 25 other farmers from Kogua applied to the Regional Forestry Officer through the Technical Officer in Berekum for a farmland within the Tain II Forest Reserve to cultivate *foodstuffs*.

Defendants tendered exhibit 1 which is their written application to the Forest Services Division for a farmland to cultivate *foodstuffs*.

According to defendants they also stated in their application that they will assist in the planting of teak trees on the plot that would be allocated to them.

The defendants asserted that in 2006, the plaintiff took a civil action against the first defendant in respect of teak seedlings in which the plaintiff was claiming an amount of GHC2,500.00. The first defendant claimed he also counter-claimed for an amount of GHC4,000.00 and his counter-claim was upheld by the court as the claims of the plaintiff were dismissed.

After carefully examining the facts and evidence on the record, I am of the considered opinion that the issues for determination are:

1. *Whether or not the teak trees in the Tain II Forest reserve as described in the writ of summons belong to the plaintiff.*
  
2. *Whether or not the alleged court action instituted by the plaintiff has any effect on the current suit.*

Before I deal with these issues for determination, I will briefly touch on the burden of proof. In civil cases, the general rule is that the one who in his pleadings or writ raises issues essential to the success of his case, assumes the onus of proof, See BANK OF WEST AFRICA LTD V. ACKUN [1963] 64 176. The civil onus is on the balance of probabilities, SEE Section 12 of the Evidence Act, 1975 (Act 323).

In this instant case the first burden lies on the plaintiff to adduce sufficient credible evidence to convince the court that he owns the teak trees in Tain II Forest Reserve compartments 200, 222 and 223 at farm 36 Antokrom.

The second burden also lies on the defendants to convince the court that the alleged suit filed in 2006 against the first defendant has any effect on the instant case.

The plaintiff had told the court that he operates under the business name ATBED ENTERPRISE and he used his business name to apply for 250 hectares of degraded forest in Tain II Forest reserve where he was authorised by Forest Service Division to plant 250 hectares of teak seedlings provided by his company. An approval letter from the National Headquarters of the Forest Service Division executed by the then Acting Director was tendered by the plaintiff as exhibit B1. This document authorised the plaintiff to reforest 250 hectares in the Tain II Forest Reserve. Documents evidencing the payment of ground rent and lease and benefit sharing agreements between him and Forest Service Division were also tendered as exhibits.

From the foregoing, it is crystal clear that the plaintiff lawfully and formally acquired the Tain II Forest Reserve where he duly planted teak seedlings as averred by him.

Indeed, the plaintiff corroborated his evidence with all relevant documents that showed that he already had correspondences with the Forest Service Division which is the state institution mandated to deal with forestry issues.

The defendants who resisted the claim of the plaintiff relied heavily on the fact that the instant issue had once been litigated in this court. The court gave them the opportunity to provide the judgement to guide the court but they could not do so.

In their defence, the defendants stated in paragraph 7 of their statement of defence and same repeated in paragraph 8 of their witness statement that they applied to the Forest Service Division to cultivate *foodstuffs* and to *assist* in planting of trees.

Furthermore, in their application to the Forest Service Division (Exhibit 1), the defendants in paragraph 2 wrote thus “We have organised ourselves for production of *foodstuffs* only and we shall also *assist* in the planting of trees in the cultivated area which will be allocated to us”.

So, for all intents and purposes the defendants’ application to the Forest Service Division was to cultivate food crops. Assisting in the planting of seedling does not mean that upon maturity the trees become theirs.

Even though the court has taken judicial notice of Exhibit 1 (the application by the defendants to the Forest Service Division) there is even no evidence that the Forest Service Division granted the defendants and their group members the permission to enter the forest reserve and cultivate food crops. It therefore appears that the Forest Service Division did not even grant them the authorization to enter the forest reserve.

If they had any such document from the Forest Service Division, I do not know why they did not tender same in court.

Section II (4) of the Evidence Act, 1975 (NRCD 323) provides that the burden of producing evidence requires a party to produce sufficient evidence which on the totality of the evidence leads a reasonable mind to conclude that the existence of the fact was more probable than its non-existence.

Taking inspiration from the above provision, I am of the considered opinion that the defendants have failed to provide sufficient evidence to convince the court that they own any teak trees in the Tain II forest reserve at Namasua.

By a preponderance of the probabilities the court is of the conviction that the plaintiff has provided superior evidence in proof of his claims and is therefore entitled to judicial victory.

Judgement is accordingly entered in favour of the plaintiff as follows:

- (1) The plaintiffs is declared the owner of all the teak trees in the 250 hectare plantation of compartments 200, 222 and 223 in the Tain II Forest Reserve at Antokrom.*
- (2) The defendants, their assigns, privies, agents, workmen etc are forthwith restrained perpetually from cutting any economic trees from the plaintiff's concession.*
- (3) Costs of GHC4,500 against the defendants jointly and severally.*

SGD.

H/W AUGUSTINE AKUSA-AM

(MAGISTRATE)

**AA.**















