

**IN THE DISTRICT COURT AT WASA AKROPONG HELD ON THURSDAY THE 8TH
DAY OF JUNE, 2023, BEFORE HIS WORSHIP MR. AKOANDE A. BRIGHT, ESQ
DISTRICT MAGISTRATE**

SUIT NO. A1/6/22

KWABENA ADDAE

VRS

MARIAMA ALI AND ANOTHER

JUDGMENT

The plaintiff's claim is as follows:

"1. Declaration of title to and Recovery of all that piece of land situate and being at a place commonly known and called Ayisia near Wasa Akropong sharing boundary with the properties of Nana Ampong, Kwame Amoah and Opanin Amro as the plaintiff's property.

2. Recovery of the sum of forty Thousand Ghana Cedis (GHc40,000.00) being the cost of the plaintiff's food staffs and his cocoa beans.

3. Perpetual injunction restraining the 1st and 2nd defendants their agents, assigns, workmen and anybody claiming through them from having any dealings with the said disputed land thereon.

4. Cost of litigation"

Though the plaintiff's first relief is for declaration of title to a piece of land and recovery of possession, the evidence that he led centered exclusively on a cocoa farm; see Plaintiff's witness statement and the witness statements of his two witnesses, Pw1 and Pw2. The first defendant's case is also exclusively centered on a cocoa farm. The second defendant

was duly served with the writ and all other processes but he declined the invitation to come to court and defend himself. A principle of law is that when a defendant declines an invitation to defend himself of allegations made against him, the court is entitled to proceed with the hearing of the case and give judgment on the basis of evidence on the record, see Republic Vrs. High Court Accra, Ex parte Akita, civil motion JS/7/2010 dated 17/02/2010.

After examining the pleadings and evidence of the parties as well as the evidence of their witnesses, I am of the considered opinion that the central issue for determination is whether or not the plaintiff is the owner of the cocoa farm in dispute. Before I determine the central issue, I will briefly touch on the burden of proof. The law is settled that it is the duty of the plaintiff to prove his or her case for he who alleges must prove. Put differently, it is the party who raises an issue essential to the success of his case who assumes the burden of proving such issue. This burden of proof is statutorily defined in sections 10 (1) and (2), 11 (1) and (4) and 12 (1) and (2) of the Evidence Act, 1975 (Act 323). The burden of proof in civil cases has further been explained in Adwubeng Vrs. Domfeh [1996-97] I S C G L R 660.

I now proceed to determine the central issue which is whether or not the plaintiff is the owner of the cocoa farm in dispute. I do not intend to give a lengthy treatment to the central issue. This is because the last question that the plaintiff's attorney asked the first defendant when the latter was being cross-examined, has dealt a fatal blow to the plaintiff's case. The said question asked by the plaintiff's attorney and the answer provided by the first defendant are as follows:

Q. "I am putting it to you that the farm in dispute has been shared between my father, Akpalo Mensah and you.

A. Your father was sick and could not go for the sharing of the farm. You and the plaintiff represented him and the two of you claimed a portion of the land which led to this dispute”.

If the farm in dispute has already been shared between the plaintiff's father and the first defendant, then the plaintiff is not the owner of the farm. It is instructive that the plaintiff was present when the farm in dispute was shared. The first defendant's case is that her uncle, Amoh (deceased) gave the land to the plaintiff's father, Mensah Akpalo on abunu basis. So if the farm in dispute has been shared between the first defendant (who represents the family of her deceased uncle, Amoh) and plaintiff's father, it means that it has been shared between the rightful owners. The evidence on the record shows clearly that the land was given to the plaintiff's late father by the first defendant's late uncle on abunu tenancy basis. The plaintiff's claim of ownership to the farm in dispute therefore has no legal basis. On the evidence, I find and hold that the plaintiff is not the owner of the cocoa farm in dispute.

Also, the plaintiff has failed to lead cogent evidence to establish that the first defendant made away with food stuff and cocoa beans amounting to GHc40,000.00 belonging to the former. The plaintiff never stated anywhere in his witness statement that the first defendant is indebted to him to the sum of GHc40,000.00 in respect of food stuff and cocoa beans. Pw1 and Pw2 did not also give evidence pertaining to the alleged GHc40,000.00. Interestingly, the plaintiff per paragraph 10 of his witness statement reduced the GHc40,000.00 to GHc7,000.00. However, the first defendant vehemently denied the allegation of the plaintiff. The plaintiff woefully failed to lead sufficient evidence to establish or prove his allegation that the first defendant unlawfully took away food stuff and cocoa beans belonging to him (plaintiff). The plaintiff's allegation in this regard is a bare one.

For the foregoing reasons, I do not find the defendants liable to the claim. The suit is hereby dismissed.

Costs of GHc2,000.00 is awarded against the plaintiff and in favour of the first defendant

(SGD)

MR. A. A. BRIGHT

DISTRICT MAGISTRATE