

IN THE DISTRICT COURT HELD AT SEFWI JUABOSO ON  
WEDNESDAY THE 10<sup>TH</sup> DAY OF MAY, 2023 BEFORE HIS  
WORSHIP SAMUEL ENTEE JNR.

SUIT NO. A1/18/23

JANET AMOAKO

VRS.

- a. FRANCIS AWUAH
- b. KWAME ABUNUBUNU

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**JUDGMENT:**

This is a land suit in which the Plaintiff is seeking a declaration of title, recovery of possession and perpetual injunction against the Defendant in respect of a building plot of Sefwi Elluibo.

**THE PLAINTIFF'S CASE**

It is the case of the Plaintiff that her late father, Stephen Amoako, purchased the disputed land in 2005 from the late Maame Agyanimah who was a member of her late father's family and obtained a permit for the land from the Juaboso District Assembly in the same year.

The Plaintiff said that her late father bequeathed the disputed land to her in his will and she deposited sand on it and erected pillars on the land as well. She further said the Defendants had placed a kiosk each on the land and had refused to remove the kiosks when they had earlier promised to remove them, when she was ready to develop the land but had rather removed two (2) of the pillars she erected on the land. But when the environmental officer summoned the owner of the land for allowing weeds to overgrow on it, the 1<sup>st</sup> Defendant

said the land belonged to her and she responded to the summons so the disputed land belonged to her and therefore the Court should enter judgment in her favor on her claim against the Defendants.

### **THE DEFENDANTS' CASE**

The 1<sup>st</sup> Defendant gave evidence for both Defendants. According to the 1<sup>st</sup> Defendant, he needed a place to sell credit cards and transfer credits so he informed his late father, Thomas Awuah, the then Gyaasehene of Sefwi Elluibo. That his father took him to the then chief of Elluibo, Nana Kwaku Mintah, and the chief after accepting a bottle of schnapps allocated the disputed land to him. That later the chief asked him to let the 2<sup>nd</sup> Defendant place his lotto kiosk on part of the land to operate a lotto business and he allowed the 2<sup>nd</sup> Defendant on the land.

The 1<sup>st</sup> Defendant said he and the 2<sup>nd</sup> Defendant had been on the disputed land since 2008 and had not encountered any dispute over the land with anyone. But in July 2021, the Plaintiff's younger brother, Kojo Kaya, deposited sand on the disputed land and when he enquired about it, Kojo Kaya told him that they would use the sand to mould blocks to construct a concrete foundation and place the kiosk the Plaintiff's father gave to her on it. But the Plaintiff did not use the sand and weed grew on the sand and the environmental officer summoned the Plaintiff over the overgrown weeds on the sand. The 1<sup>st</sup> Defendant further said in December 2022, the Plaintiff asked one Kwaku Osei to tell them to remove the kiosks on the disputed land, but they refused, and the Plaintiff reported him (1<sup>st</sup> Defendant) to the police. However, after the police inspected the disputed land, the police advised the parties to take a civil action to claim the land, and the Plaintiff instituted this action against them, but the disputed land belonged to him (1<sup>st</sup> Defendant) and not the Plaintiff.

### **ISSUES**

After going through the facts, the issues that came up for determination by the court are:

1. Whether or not the Plaintiff's late father acquired the disputed land from Maame Agyanimah.

2. Whether or not the Chief of Elluibo granted the disputed to the 1<sup>st</sup> Defendant.
3. Whether or not the Plaintiff is entitled to her claim.

### **NOW ANALYSIS OF THE ISSUES**

**ISSUE ONE:** Whether or not the Plaintiff's late father acquired the disputed land from Maame Agyanimah

On the first issue, the Plaintiff said her late father, Stephen Amoako @ Nana Kwasi Badu (Abakomahene of Sefwi Elluibo) acquired land including the disputed land from the late Maame Agyanimah in 2005. When the 1<sup>st</sup> Defendant put it to the Plaintiff that it was Nana Kwaku Mintah who granted the disputed land to him (1<sup>st</sup> Defendant), the Plaintiff maintained that it was Maame Agyanimah who granted the land to her late father.

According to Nana Kwaku Mintah (DW1), the Plaintiff's late father and the 1<sup>st</sup> Defendant's late father were two of his elders when he was the chief of Elluibo and that he granted the disputed land to the 1<sup>st</sup> Defendant's late father and granted the adjoining land to the Plaintiff's late father.

The Plaintiff put it to DW1 that her late father did not acquire the land from him but rather acquired it from the late Maame Agyanimah and DW1 replied that it was not true that Maame Agyanimah granted the land to her late father because that woman had no land at Elluibo to grant it to her late father.

The response from DW1 above was a direct challenge to the Plaintiff's assertion that Maame Agyanimah granted the disputed land to her father, and the said response from DW1 together with his evidence supported the evidence of the 1<sup>st</sup> Defendant. But the Plaintiff failed to call any witness to confirm her assertion that Maame Agyanimah indeed granted the disputed land to her late father. The Plaintiff even said her late father and the late Maame Agyanimah were related as family members, so the court expected that at least a member of the said family would be called by the Plaintiff to corroborate her evidence on the grant of land to her late father by Maame Agyanimah.

DW1 gave his evidence in a straightforward manner and was not discredited under cross-examination by the Plaintiff. In the view of the court, DW1 was a credible witness. The court is therefore inclined to accept the corroborated evidence of the 1<sup>st</sup> Defendant that DW1 granted the disputed land to him through his late father to the uncorroborated evidence of the Plaintiff that Maame Agyanimah granted it to her late father.

In fact, the 1<sup>st</sup> Defendant stated in his statement of defence and confirmed it under cross-examination by the Plaintiff that the disputed plot was a state land as the high tension lines passed overhead the plot and an electricity pole was sited at the back of the same land. DW1 confirmed that high tension lines passed above the disputed land. Judicial notice is taken of the fact that the land directly beneath and a certain distance away from high tension electricity lines is state property.

The evidence showed that the disputed land and falls in that category of land. DW1 said under cross-examination by Plaintiff that he as the chief of Elluibo granted the disputed land though he knew it fell under the high tension and in the hands of the State, but the State normally gave those occupying such a place 6 months to leave the land; however, due to unemployment, the State did not bother those at such a place any longer. From this undisputed evidence by the Defendants therefore, it is the view of the court that the disputed land could not have been granted to the Plaintiff's father by Maame Agyanimah.

Accordingly, I find that the Plaintiff's late father did not acquire the disputed land from Maame Agyanimah.

**ISSUE TWO:** Whether or not the Chief of Elluibo granted the disputed to the 1<sup>st</sup> Defendant.

On the second issue, the Plaintiff put it to the 1<sup>st</sup> Defendant that if he presented a drink to the Chief but the chief did not give him any document to show the grant of the land to him, then it was not true that the land was granted to him. To this, the 1<sup>st</sup> Defendant replied that the Chief did not sell the land to him so there was no need for any document on the land. DW1 himself testified that he granted the disputed land to 1<sup>st</sup> Defendant through the 1<sup>st</sup>

Defendant's father after they presented a bottle of schnapps to him. DW1 added that he even granted the Plaintiff's late father's land to him.

The Plaintiff questioned him as to why he did not give her father and 1<sup>st</sup> Defendant's father any document to show that indeed he granted the land to them. DW1 replied that normally they did not give documents on small parcels of land which subjects of the stool requested to use for their business. To another question that DW1 said he granted the land to her (Plaintiff's) father and 1<sup>st</sup> Defendant's father in 2005, DW1 replied in the affirmative. The Plaintiff then put it to DW1 that his evidence was false because the 1<sup>st</sup> Defendant said he came for the land in 2008, but DW1 said he granted the land to them in 2005; DW1 replied that he was telling the truth and that if any person told the Plaintiff that he or she granted the land to her late father then the person was rather not telling the truth because he granted the disputed land to the 1<sup>st</sup> Defendant's father and the adjacent land to her father. But the Plaintiff could not lead sufficient evidence to establish that the disputed land was granted by another person to the 1<sup>st</sup> Defendant's father or the adjacent land to her father. The court is therefore of the considered view that the 1<sup>st</sup> Defendant might have missed the actual year the land was granted by DW1 to him through his late father but since the evidence showed that the Plaintiff's late father was granted his land in 2005, then the court deems it that it was in 2005 that DW1 granted the disputed land to the 1<sup>st</sup> Defendant's late father so DW1's evidence that he granted the land to them in 2005 could not be false.

Accordingly, I find that the then Chief of Elluibo, Nana Kwaku Mintah, granted the disputed land to the 1<sup>st</sup> Defendant through his late father.

**ISSUE THREE:** - Whether or not the Plaintiff is entitled to her claim.

On the third issue, the Plaintiff said her late father acquired a permit on two (2) plots including the disputed land from the Juaboso District Assembly. She tendered the permit in evidence as Exhibit 'B'.

Samuel Mintah (PW1), the Sanaahene of the Juaboso Traditional Council, testified that he retired in 2015 as the Chief Revenue Officer of Juaboso District Assembly and that Exhibit 'B' was issued by one Mr Adjei (deceased), who used to work under him as a Revenue Collector, to the Plaintiff's late father to place a container on the land and that the permit was genuine.

To a question by the 1<sup>st</sup> Defendant whether the District Assembly was aware that he was in court defending a document in the name of the Assembly when he had retired, PW1 replied that the Assembly was not aware but it was during his time in office that the receipt (Exhibit 'B') was issued, and the workers at the Assembly currently did not know anything about the receipt as they were new workers.

The court is of the view that since it was issued in its name, it is the Assembly which should have come to court to defend it by delegating an officer to do so. Once PW1 had retired as an officer of the Assembly, he could not give evidence in the name of the Assembly without the knowledge and consent of the Assembly.

The Plaintiff should have therefore applied to the court for a witness summons to the Coordinating Director of the Assembly who would then inform the appropriate or concerned department to come to court to defend the receipt or permit (Exhibit 'B').

Accordingly, the evidence of PW1 is of no effect whatsoever in connection with the case.

Exhibit 'B' which was issued on 2<sup>nd</sup> November, 2005 stated, "one hundred thousand cedis was received from Stephen Amoako being plot issuing to him as permit (kiosk double) (2)".

In fact, the content on Exhibit 'B' does not state that there were two (2) plots. The court is of the considered view that if the plot were two (2) plots, the officer who issued Exhibit 'B' would have written "Being two (2) plots issuing to him as permit" and not "Being plot issuing to him as permit" because what followed that is "(kiosk double) (2)" could mean that Stephen Amoako could place two (2) kiosks on the plot and not that there were two (2) plots

of land. So even evaluating Exhibit 'B' on its own merits does not support the Plaintiff's evidence that his late father acquired a permit to cover two (2) plots including the disputed land. Exhibit 'B' in the opinion of the court covered only one plot and not two (2) plots and so Exhibit 'B' did not cover the disputed land.

The Plaintiff again said her late father bequeathed the disputed land to her in his will which she tendered in evidence as Exhibit 'C'. Paragraph 5 of Exhibit 'C' stated that "I have a kiosk at Elluibo sited near Maame Agyanimah's house. I give the said kiosk to my daughter, Janet Amoako exclusively". Paragraph 5 of Exhibit 'C' did not state anything about land and ownership of land. But there was a kiosk which Exhibit 'C' stated that it had been given to the Plaintiff. Normally, when a house is bequeathed to someone in a will, there is no need to add the land because the house is part of the land since it is a permanent structure. But a kiosk is a temporary structure and may not necessarily be part of the land on which it is located as a kiosk could be removed easily. So if the land belongs to the owner of the kiosk, i.e. the testator, he should specify it when gifting or devising the kiosk to the beneficiary that the land is also bequeathed to him or her in addition to the kiosk. It is the view of the court that probably the Plaintiff's late father knew that the plot on which his kiosk was situated did not even belong to him, that was why he did not bother to specifically state that he had also bequeathed the land on which the kiosk was situated to the Plaintiff, let alone bequeathing the adjacent land which is the disputed plot to her. So on the facts, Exhibit 'C' does support the Plaintiff's assertion that her late father gifted the kiosk and the two (2) plots including the disputed plot to her in his will.

The evidence rather showed that the Plaintiff's late father gifted the kiosk situated on his one plot to her.

Again, the Plaintiff said the environmental officer of Juaboso District Assembly summoned the owner of the disputed land and 1<sup>st</sup> Defendant said the land belonged to her, and she accordingly, responded to the summons. She tendered the summons in evidence as Exhibit 'A'. It was addressed to Amoako Janet of Elluibo. The nuisance complained of was

“overgrown of weeds on your undeveloped building plot in the community contrary to Section 56 (a) and (b) of the Public Health Act, 2012 (Act 851)”. Exhibit ‘A’ was served on the Plaintiff on 26/05/2020.

According to the environmental officer, Roger Kpexor (PW2), sometime in the middle of the year 2020 thereabout, he went on a routine inspection at Sefwi Elluibo and came across a heap of sand which was full of weeds so he asked for the owner of the sand and people around said it belonged to the Plaintiff and he subsequently issued a mandatory notice to Plaintiff to explain why she should not be sent to court for letting weeds grow at the site. That the Plaintiff complied and later he went to inspect the site and saw that the weed had been cleared.

The 1<sup>st</sup> Defendant asked PW2 whether he summoned the Plaintiff on the overgrown weeds on the heap of sand or on the plot of land and PW2 replied that he summoned her on the growth of weeds on the sand. Although it was stated in Exhibit ‘A’ that “overgrowth of weeds on your undeveloped building plot”, PW2 who issued Exhibit ‘A’ told the court that he asked for the owner of the heap of sand on the plot and the people around at the time said it belonged to the Plaintiff. Under cross-examination too he maintained that he summoned the Plaintiff on the growth of the weeds on the sand and not on the land.

The court is therefore of the considered view that what PW2 stated in Exhibit ‘A’ was a general statement because since the sand had been heaped on the land and the sand was overgrown with weeds, PW2 could not be said to have done anything wrong by stating that there was overgrowth of weeds on the land as the sand was on the land. But in court, he clarified that he summoned the Plaintiff because of the weeds on the sand heaped on the land and not because of the weeds on the land itself.

There is therefore an overwhelming evidence before the court that the environmental officer summoned Plaintiff on the growth of weeds on the sand not the land. I therefore find as such. At any rate, even if PW2 summoned the Plaintiff for overgrowth of weeds on the disputed



land itself and stated that the Plaintiff was the owner of the disputed land, the court is of the view that PW2 could not stand by the roadside and asked people about the owner of a particular plot of land and if a name is mentioned to him, then he would write down the name as the legitimate owner of the particular plot because people may perceive someone as the owner of a plot of land when in actual fact and in law that someone is not the owner of the land.

Be that as it may, there is a plethora of evidence before the court which clearly showed that the disputed land does not belong to the Plaintiff's late father, let alone bequeathing it to her. The disputed land rather belongs to the 1<sup>st</sup> Defendant. On all the evidence before the court, therefore, and on all the preponderance of probabilities, I find that the Plaintiff is not entitled to her claim. Accordingly, the Plaintiff's claim is hereby dismissed. However, due to the nature and circumstances of the case, there is no order as to costs.

**SGD:: H/W SAMUEL ENTEE JNR.**  
**DISTRICT MAGISTRATE**