IN THE DISTRICT COURT KIBI, EASTERN REGION, HELD ON TUESDAY 8TH AUGUST, 2023 BEFORE HER WORSHIP MRS. JULIET OSEI – DUEDU SITTING AS THE MAGISTRATE

SUIT NUMBER: A1/19/21

1. **FRANCIS JOHN AKUFFO FIRST PLAINTIFF**
2. **ROSINA AMPONSAH SECOND PLAINTIFF**
3. **KUKRAN BRICKS & TILES LTD. THIRD PLAINTIFF**

VRS

1. **MR. OTENG FIRST DEFENDANT**
2. **SAMPSON KOFI DJAN SECOND DEFENDANT**

JUDGMENT

Plaintiffs herein on the 4th May, 2021, initiated the present action against the defendants in this case, and per their amended writ of summons filed on the 16th July, 2021, pursuant to a court order, plaintiffs claim against the defendants, jointly and severally as follows;

"1. Declaration of title to all that piece or parcel of land situate and lying at Apedwa New Town in the Eastern Region of the Republic of Ghana bounded on the North by Madam Abena Donkor's property, on the East by Madam Amma Botwe's property, On the South by Kibi to Accra motorable road and on the West by Mr. K. Aboagye's property.

2. Recovery of possession.

3. General Damages for trespass.

4. Perpetual injunction restraining the defendants, their agents, servants, successors in title and all those claiming through the defendants from laying adverse claim to the land.

5. Costs."

The brief facts of the case as garnered from plaintiffs' statement of claim are that, the first two plaintiffs who are husband and wife operated a brick factory in the name of

the third plaintiff. Somewhere in 1979, the couple acquired a parcel of land in the area above described in the name of third defendant, in respect of

which the disputed land forms part. The plaintiffs had been in possession of their land without let or hindrance until defendants encroached on a portion of it by grading same thereby destroying the food crops planted thereon. Plaintiffs warned the defendants off the said land but to no avail hence the present action.

Defendants who disputed the facts as set out by the plaintiffs filed their statement of defence, claiming ownership of the disputed land and alleging that, it only shares boundary with plaintiff's land. They describe the said land in paragraph 14 of their defence, in a schedule therein as follows; "All that piece or parcel of land situate and lying and being at Apedwa Junction in the Abuakwa South Municipality in the Eastern Region of the Republic of Ghana and containing an approximate area of 0.83 acre or 0.34 hectare and boundaries whereof commencing from survey pillar marked SGE A2130/ 21 / 1 to pillar …/2, measuring on that side a total distance of 188.7' feet more or less; from… pillar…/2 to /3, measuring on that side with a total distance of 207.3' feet more or less; from pillar marked …/3 to … /4, measuring on that side, a total distance of 186.1' feet more or less and thence from pillar …/4 to …/1, a total distance of, 187.1' feet more or less."

Defendants also counterclaim against the plaintiffs in their defence so;

"a) Declaration of title to all that piece or parcel of land with an approximate area of 0.83 acre or 0.34 hectare situate lying and being at Apedwa junction as described in the schedule above.

b) Recovery of possession.

c) Perpetual injunction restraining the plaintiffs, their agents, servants, assigns and personal representatives from doing anything whatsoever on the said land pending the final determination of this matter."

In civil trials as in the instant case, the rule generally is that, the party who in his pleadings or his writ raises issues essential to his case assumes the onus of proof, **Bank of West Africa Ltd.V Akun [1963]1 GLR 176 SC, applied.** And the standard burden of proof in all civil matters, land cases inclusive, as postulated by the Evidence Act 1975, (NRCD 323,) sections 11(4) and 12(1), is proof by the preponderance of probabilities. Section 11(4) of the Act provides that the burden

of producing evidence requires a party to produce sufficient evidence so that on all the evidence a reasonable mind could conclude that the existence of a fact is more probable than its non – existence. Section 12(1) on the other hand states that, except as otherwise provided by law, the burden of persuasion requires proof by a preponderance of the probabilities.

In the instant case therefore, since it is the plaintiffs who first dragged defendants to court with some claims against them, they bear the burden of establishing same to the required standard. It should however be noted that, where a defendant also makes a counterclaim against the plaintiff in a cross – action, they bear the same burden in establishing their counterclaim as does the plaintiff. In fact, according to Orders 15 and 18 rule 13 of the District Court Rules 2009 (CI 59), a counterclaim is a relief available to any defendant to be claimed against the plaintiff in the action instituted by the plaintiff. It nonetheless, has the same effect as the claim of the plaintiff and so must be proved by the defendant on the preponderance of probabilities. Hence, the defendants herein must prove their counterclaim in accordance with the standard of proof stated above.

It should also be noted that, to successfully maintain an action for declaration of title, the party involved must prove with certainty the boundaries of the land claimed, how much he bought the land, the price that he paid for it and the documentary proof establishing his title. The plaintiff must establish by positive evidence, the identity and limits of the land he claims. A defendant who has a counterclaim has the same responsibility as the plaintiff and he would be expected to discharge the same burden of proof in order to succeed. Hence, both parties in the present case must satisfy these special requirements. The above principle has been given judicial blessings in cases such as; **Osae V Adjeifio [2008] 4 GMJ 149 SC, Asante Appiah V Amponsa [2009] SCGLR 90, Abbey & Others V Antwi [2010] SCGLR 17 and Mary A. Kissiedu V Kwame Kai & Anor. [2011] 37 GMJ 160,** to mention but a few. In the case of **Jass Company Limited V Appau and Another [2012] SCGLR, 265,** rightly cited by Counsel for plaintiffs in his written address however, the Supreme Court held that it is a requirement for a plaintiff in a matter to prove the identity of his land but it should not be of mathematical precision or accuracy. Hence, where a plaintiff provides a plan

drawn to scale to establish the identity of his land, it suffices. These principles are therefore applicable in the case under consideration, same being a land matter.

At the trial of this case, second plaintiff (P2) testified on the joint behalf of all three plaintiffs but called no witness. Second defendant (D2), also testified on his own behalf alleging that first defendant was only his caretaker. He called one witness. The court equally, with the consent of the parties called an expert witness in the nature of a surveyor with the Survey and Mapping Division of Lands Commission, Koforidua. The said witness upon a court order and with the survey instructions filed by Counsel for the respective parties, prepared a composite plan to assist the court's determination of thus matter. At the end of the trial, the following issues came up for determination by the court;

1. Whether or not the disputed land forms part of plaintiffs' seven (7) acre land.
2. Whether or not defendants have title to the land in dispute claimed by second defendants.

I will address these issues seriatim. First is the issue of whether or not the disputed land forms part of plaintiffs' land. It is the case of the plaintiffs that, they acquired a parcel of land, situated at Apedwa New Town, in 1979, from the Asakyiri Clan therefrom, through their head and lawful representative, Mr. Kofi Amaning. They subsequently registered the said land in the Lands registry as number, 2280/1986 at the Lands Commission Koforidua. The land is also appropriately described in an indenture made in favour P3 and a copy tendered in evidence with its attached site plan as exhibit A. The land in question is equally bounded on its four sides by the properties of the three boundary owners earlier stated in this plaintiffs' claim quoted above, and the Kibi to Accra motorable road. After the acquisition of the land, they initially operated their bricks molding business on it but subsequently used same for farming food crops.

According to P2'S testimony again, they had enjoyed an exclusive, quiet and undisturbed possession of their land since its acquisition in 1979 until in 2012, one Madam Akosua Tuaa purported to give the land under litigation to one Aboagye. P2 therefore summoned the two people before the Apedwa Ahenfie

Court of Arbitration, chaired by the Apedwa Hene, Osabarima Obenakwa Kwarifa II and the matter was resolved in plaintiffs' favour. The panel consequently ordered the said Aboagye to vacate plaintiff's land which arbitration award was duly published in a letter dated, 28th February, 2012 addressed to the said Aboagye. A copy of the letter was tendered in evidence as exhibit B. In 2021, the defendants also, went to the land with earth moving equipment and started destroying the food crops planted by plaintiffs'

caretaker with impunity. It is the children of this same Madam Tuaa (now deceased), who claim their mother sold the land to some other people, including defendants' alleged grantor. P2 maintained in cross – examination that, defendants' land forms part of their 7-acre land.

The second defendant in his testimony, denied that the land in dispute forms part of plaintiffs' land. According to him, his land which is 0.83 of an acre in size, though situated at Apedwa in the Akim Abuakwa South Municipality, is different from that of the plaintiffs. The disputed land rather shares boundary with plaintiff's land and that of Nana Yaw Bosompem, DW1 in this case. DW1 confirms D2'S evidence that, the disputed land only shares boundary with plaintiff's land but does not form part of it. This contention by the defendants appears to question the identity of plaintiff's land, but not their title to same. In other words, defendants do not challenge plaintiffs' acquisition of their land from their described vendors, but rather assert that, whatever land was acquired by plaintiffs, excludes the disputed land which only shares boundary with that land.

Plaintiffs' have nevertheless, provided both oral and documentary evidence in establishing the identity of their land, the root of their title to same and how much they paid for it. Per exhibit A, plaintiffs, indenture and site plan covering their land, they paid Twenty Thousand Cedis in 1979 for the 7 acres parcel of land. The interest in the land stated as having been purchased by the plaintiffs is also; fee simple. The land was equally, duly registered at the Lands registry as number; 2280/1986 in favour of P3, as testified by P2. On the disparity between the date of purchase and that stated in their document, exhibit A to be precise, this is the explanation offered by P2 in Cross – examination;

Q. Have a look at your exhibit A, that is your site plan, the date on it is 1986 so it means that you didn't buy the land in 1979.

A. What it means rather, is that, the site plan and the indenture were not prepared the very year the land was bought. It took some time for them to be prepared hence the disparity.

Q. It means that as at 1979, you were not working on the land because it was in 1986 that you were given the indenture and site plan.

A. When we bought the land, we started putting our machines for the bricks together and when this was done and the vendor realized that we were indeed serious to work on the land, that was when he prepared the documents covering the land for us.

It is note while that, in the course of the cross – examination and on a different day, P2 was re – questioned on this disparity but in a different form, and her explanation was the same, making reference even to the above stated answer as having already given same to the court. This conduct of P2 thus leans favourably to her credibility.

Second plaintiff was equally adamant in maintaining in the same cross – examination that the disputed land is part of their land. Tried as Counsel for defendants did, he could not get her to state otherwise. This is what transpired;

Q. I am putting it to you that, the land for which we are in court is different from the land the second defendant owns.

A. It is not different, they are the same.

Q. Our land is 0.83 acre it does not fall in your land.

A. It is not D2'S land and the said land is part of my 7 – acre land.

Q. I am putting it to you that you have extended your boundary to cover D2'S land.

A. D2 has no land over there, I share no boundary with any of the two defendants.

Q. Do you still have remnants of your block factory equipment on the land?

A. It was not a block factory but burnt bricks. Yes, some have even become hills but they are not scattered over the whole land.

Q. Do you have some on D2'S land?

A. I have said D2 has no land there, but I have none of the equipment on that part of the land.

Q. Do you have some of the teak trees on 2nd defendant's land?

A. No, but Kofi Djan (D2) has no land there.

Q. What crops had you been planting on D2'S land?

A. D2 has no land there, but I had planted plantain, cocoyam and coconut with the coconut being at the edge of the land.

Q. The land on which you took Madan Akosua Tuaa to the Ahenfie is not the same land that D2 is in possession of?

A. It is the very same land.

Q. I am putting it to you that, you do not have any plantain or crops on Kofi Djan's land as you are alleging.

A. I have planted plantain and other crops on the land. The very first day I saw Kofi Djan on the land with the machine, he never came there again. Prior to that, it was Oteng, (D1) who brought the machine to the land and I confronted him on why he was destroying my crops and he said he has bought the land.

Per her answers above, P2 was consistent in her claim that D2 owns no different land at the place their land is located. The only land he is laying adverse claim to is none other than part of plaintiffs' land. Her conduct as such, leaves no doubt in the mind of the court that the disputed land is no different land owned by D2 but part of plaintiffs' land. Accordingly, it is not surprising that the evidence of the expert witness supports P2'S assertion, in toto. The composite plan tendered in evidence by the independent witness, (the surveyor for that matter) as court exhibit 1, (CE1), clearly indicates that the disputed land, which is the same land D2 is claiming ownership of, lies squarely within the larger portion of plaintiff's land. And the witness minced no words in cross – examination by Counsel for plaintiffs in stating emphatically that, D2'S land falls within plaintiffs' land. This is a crucial piece of evidence coming from an independent witness and as such a further string to the bow of plaintiff's claim.

On the available evidence therefore, I find and hold that, the disputed land forms part of Plaintiffs' 7 – acre land. And since plaintiffs' title to their larger parcel of land is not in dispute, then by extension, they equally have title to the disputed land, without any further argument.

I now turn my attention to the last issue of, whether or not defendants have title to the disputed land. As earlier observed in this judgment, defendants' counterclaim is a separate and distinct action and so must be proved on the preponderance of probabilities. According to D2'S evidence, he purchased the disputed land over which he claims ownership from one Nana Yaa in April 2021. The said land was originally owned by Nana Yaa's late husband. He conducted a search on the land before purchasing it and it was unregistered. He did not see any remnants of a block factory on the land at the time of purchase. Exhibits 1 and 2, copies of the search report and a site

plan were tendered in evidence in support of D2'S testimony. D2 did not exhibit any indenture or any other document on the said sale beyond these two exhibits. DW1 also testified that, D2'S alleged grantor was his late brother's wife, thus, the disputed land originally belonged to his late brother.

It is however, P2'S unflinching evidence under cross – examination that, she summoned one Maame Tuaa before the chief and his elders when the latter sold out a portion of her land, that is this very land to Nana Yaa's husband. P2 made this assertion in answer to Counsel for defendants' question on what led to the creation of exhibit B, the arbitration report. Exhibit B clearly states as follows; "The Apedwa Ahenfie Arbitration Court has gone into the matter of writ issued by Madam Rosina Amponsaa of Apedwa against Madam Akosua Tuaa, who gave you that farm. Madam Tuaa has been found guilty to give you the land by the panel on 30th January, 2012. For that matter you Aboagye should stop work on the land with immediate effect." It is notable that, per P2'S evidence this Aboagye is different from the Mr. K. Aboagye, named in exhibit A as plaintiffs' boundary neighbour. The logical conclusion from all these is that, plaintiffs have not been indolent owners but very vigilant at all material times some intrusions were made into their land.

Furthermore, even though D2 alleges that he conducted a search on the land before purchasing it, his documentary evidence, exhibit 1, and testimony in cross

– examination indicate otherwise. Having purchased his land in April 2021, D2 conducted his search in August that same year. In fact, the date stated in both exhibits is 18th August, 2021, (three months after the initiation of this very action by the plaintiffs against him, the emphasis is mine.) And when confronted with this fact during cross – examination, D2 had no other option but to admit same. Hence, D2 purchased his land without due diligence, the fact of non - availability of remnants of plaintiffs' factory equipment or teak trees on that portion of the land, notwithstanding. As testified by P2, had D2 acted prudently as a purchaser and personally visited the land to ascertain his alleged boundary neighbours if any, he would have found the land incumbered by the constant presence of plaintiffs' caretaker on their land and the teak trees planted at its boundary from Kibi to Accra motorable road.

Additionally, having already found that, the disputed land claimed by D2 forms part of plaintiff's 7 – acre land acquired by them for 1979 and duly documented in favour of P3 in 1986, whatever sale of a portion of that land by D2'S grantor to him, was and still is, null and void. This is because of the principle of nemo dat quod non habet, which is

trite learning. The law is certain that, a person cannot alienate an interest in land where he has not got any interest in it, as one cannot give what they don't have. It is a nullity therefore when one purports to grant an interest in a land which he has no interest. Since the land D2'S grantor purportedly sold to him in April 2021, was not owned by her as it was already the bona fide property of the plaintiffs, the said alienation was a nullity. The alleged grantor had nothing by way of interest in the disputed land and so sold nothing to D2 who equally bought nothing. This is the fact of the matter, irrespective of the fact that, D2'S alleged search did not reveal plaintiffs as the owners of the disputed land as D2 is alleging. There is ample evidence on record to put plaintiffs' ownership of the land in question at all material time, beyond all arguments. Defendants' presence on the disputed land was indeed nothing but trespass onto plaintiffs' land. For these reasons, therefore, D2 has failed to establish the root of the title of his grantor via credible evidence, his counterclaim accordingly fails.

It is not surprising to hear D2 testify that, he caused no destruction to plaintiffs' crops. This is because per his own evidence in cross – examination, he placed the land in the care of D1 his nephew, right after its purchase. This clearly supports

P2'S unchallenged evidence on record that, it was only D1 who was working on the land at the time of coming to court that was why plaintiffs proceeded against him alone, for D2 to subsequently join, as such. With D2'S failure to visit the land personally before paying for same as clearly established by evidence led before this court, how sure is he that his caretaker, D1 did not destroy plaintiffs' crops in the course of working on the land? After all, the evidence of his only witness, seems to support that of P2 that, they had planted plantain and other food crops on the disputed land. This is what DW1 said under cross – examination;

Q. I finally put it to you that at the time Nana Yaa purportedly sold the land to D2, plaintiffs' caretaker had planted food crops on it.

A. There were no food crops except, some plantain trees scattered on the land.

Q. Is plantain, not a food crop?

A. It is a food crop.

In the light of the above corroboration by DW1 of plaintiff's case of destruction of their food crops by defendants, I prefer their story to defendants' uncorroborated version of a denial, **FKA Ltd. V Sarkodie [2009] 7 G.M. J. 185 SC at 205 applied.** Thus, not only did

defendants encroach on plaintiffs' land but they caused damage to their crops with impunity.

For all the foregoing reasons, I enter judgment in this case for plaintiffs for a declaration of title of their ownership according to the common law freehold, (that is, Fee simple) interest in the disputed land, and same in hereby entered. Plaintiffs are to recover possession of the disputed land from the defendants herein with an award of fifteen thousand Ghana Cedis (GHC 15,000.00) against defendants (and for the plaintiffs,) as damages for trespassing unto plaintiffs' land. Defendants again, together with their agents, servants, successors in title and all others claiming through them are hereby restrained perpetually from interfering with, or laying adverse claim to the disputed land. Costs of GHC 15,000.00 for the plaintiffs and against the defendants. Second Defendant's counterclaim however, fails.

Counsel for Plaintiffs: Leonard Sedzro Esq.

Counsel for Defendants: George Ahadzie Esq.

SGD

H/W MRS JULIET OSEI – DUEDU ESQ
DISTRICT MAGISTRATE
8/08/2022