

**IN THE DISTRICT MAGISTRATE COURT SITTING AT NYANKUMASI AHENKRO ON
MONDAY 17TH APRIL, 2023. BEFORE HIS WORSHIP PETER ANONGDARE – DISTRICT
MAGISTRATE.**

A1/19/2023

AMA GYAMFUA

OF ASSIN ATOBIASE

PLAINTIFF

VRS

- 1. AKWASI NKANSAH**
- 2. EMMANUEL OTENG BOAFO**
- 3. THOMAS OTENG BOAFO**

ALL OF ASSIN ATOBIASE

DEFENDANTS

JUDGEMENT

The plaintiff filed her case seeking three reliefs jointly and severally against the defendants.

1. A declaration of title to all that piece or parcel of land at a place commonly called “Onyina Kwakuaso” within the Assin Atobiase geographical area sharing boundaries with the properties of Akua Brakoa, Akwasi Kodu, Osofo Antwi and Adwoa Nkrumah.
2. Recovery of possession.
3. GH¢53,000.00 general damages being assorted cost of plaintiff’s uncompleted six bedroom flat on the said land which the defendants have pulled down without the consent of the plaintiff.

When the case was called on 31st January, 2023, the plaintiff was present. But the defendants were all absent. The proof of service showed that only the third defendant was served. A hearing notice was issued for service on the third defendant.

After three unsuccessful attempts to serve the first and second defendants the bailiff applied for substituted service. The court granted the application. In line with order 4 r 5 (c) of the District

Court Rules C1. 59 the court's order was that the writs and hearing notice be posted at the last known places of abode of the defendants, the notice board of the chief's palace of Atobiase and the court's notice board. This was to last for twenty one days before the next date. An affidavit of posting was accordingly filed. But defendants failed to come to court.

The plaintiff's case commenced on 14th March, 2023 where the plaintiff gave evidence. The plaintiff told the court that she and the defendants come from the Aduana family of Assin Atobiase.

And that about seven years ago, the plaintiff's husband contacted the plaintiff's uncle for a piece of land. The said Uncle Akwasi Addae gave the disputed land to the plaintiff and the husband. That the land shares boundaries with Akwasi Kwadu, Akua Brakoa, Osofo Antwi and Adwoa Nkrumah. And that Osofo Antwi and Adwoa Nkrumah are alive but the other boundary owners are deceased. According to the plaintiff, the land is located at Oyina Kwakuso and measures 100 x 100 feet. In addition, the plaintiff stated that Kwame Essuman (deceased), Kwaku Boateng, Kontehene of Assin Atobiase and Akwasi Amoanu were present when the plaintiff's uncle gave the land to the plaintiff and her husband. Again, the plaintiff stated that as a family member she gave drinks to symbolize acceptance of the grant of the land to them.

The defendants were given the opportunity to be heard. The third defendant was served with the writ personally. Also, a substituted service was effected first and second defendants. Thus the hearing notice and the writ were posted at the last place of abode of the first and second defendants.

From the evidence of the plaintiff her contention is that the disputed land was gifted to her and the husband. Since the defendants failed to appear in court despite having been served in accordance with the provisions of C.1 59 the court had no reason to disbelieve the plaintiff.

In *Adormson V. Tetteh* [2013] 59 GMJ 62 at 80-83, CA, the court stated the conditions of a valid customary law gift;

a) A particular interest in land to pass.

- b) An intention of the donor to make a gift to the donee.
- c) Acceptance of the gift by the donee in the life time of the donor;
- d) Delivery of the land to the donee, and
- e) Publicity

The plaintiff's case is that the land was gifted to her and the husband. This means that title in the disputed land was transferred to the plaintiff. Thus, the interest (the allodial title) was passed to the plaintiff and her husband. The plaintiff stated that the head of family and the elders including the Kontehene of Atobiase were present. This means there was a clear intention of the uncle, the donor to gift the land to the plaintiff and husband. This is fortified by the fact that the plaintiff said she gave drinks which the family accepted. That is, the giving and acceptance of the drink depict that the plaintiff accepted the gift. The plaintiff said she then started cultivating the land. And that she actually broke the virgin forest of the said land. This therefore implies that the plaintiff was then permitted to enter the land. The plaintiff said the gift was made in the presence of Kwame Essuman (deceased) Kwaku Boateng, Kontehene of Atobiase (still living) and Akwasi Amoani. Once these people were present especially the Kontehene the issue of publicity was satisfied. The plaintiff called the Kontihene as her witness. The Kontehene testified in Court that he was present when the plaintiff's husband came to ask for the land. And the uncle of the plaintiff, Akwasi Addae Twafohene of Assin Atobiase actually gifted the disputed land to the plaintiff and the husband. Kontehene confirmed the fact that the plaintiff and husband gave drinks in acceptance of the gift as custom demands. With the corroboration of the evidence of the plaintiff by the Kontehene it adds to the probative value of the evidence of the plaintiff. It will therefore mean that the criteria set in Adormason V. Tetteh [2013] case quoted above were established by the plaintiff's evidence. I am thus inclined to believe the plaintiff's case.

In view of the foregoing, I come to the conclusion that the disputed land was gifted to the plaintiff and husband by her uncle, Akwasi Addae (Twafohene of Assin Atobiase) consequently, I enter judgment for the plaintiff.

Final orders;

1. Title is declared in favour of the plaintiff in respect of the land, the subject matter of the dispute.
2. The defendants are ordered to vacate the land with immediate effect for the plaintiff to occupy and use her property.
3. General damages of GHC45,000.00 (Forty five thousand Ghana cedis is awarded against the defendants jointly and severally.
4. Costs of GHC1,500.00 (One thousand and five hundred Ghana cedis) is awarded against the defendants.

The reason for the judgment in favour of the plaintiff is the fact that, the plaintiff was able to prove that her uncle gifted the disputed land to her and the husband. And the court believed the plaintiff's evidence, hence the conclusions.

SGD

HIS WORSHIP PETER ANONGDARE