CORAM: HER WORSHIP (MRS.) ROSEMARY EDITH HAYFORD, MAGISTRATE, DISTRICT COURT B, SEKONDI HELD ON THE 28TH OF FEBRUARY, 2023

SUIT NUMBER A9/36/2018

CHARLES ACKON - PLAINTIFF

VRS

KWAWKAN
KWAW ESSOUN
NKETIABA
EKUTSIA - **DEFENDANTS**
DEFENDANTS
KOJO
ACKON
(ALL OF NTANKOFUL**)**

TIME: 11.33 AM

PLAINTIFF - PRESENT

DEFENDANTS - 1ST, 2ND 3RD 5TH & 6TH DEFENDANTS PRESENT

4TH DEFENDANT ABSENT

JUDGMENT

By a Writ of Summons filed on 04/05/2018, Plaintiff claims against the defendants the following reliefs:

1. *A declaration that House No. T2 is not the property of Papa Nketsia, but the property of Maame Bosomtwi Basia and her children.*
2. *Recovery of an amount of GH₵2,000.00 the cost of destroyed profiles.*
3. *Perpetual injunction restraining the Defendants, their agents, privies, assigns etc. interfering with the said house the subject matter in this dispute.*

Per the Statement of Claim filed on 3/7/2018, the Plaintiff avers that he is one of the three children of the late Maame Bosumtwi Basia of Ntankoful and also the administrator of the estate of Barima Ntuful (deceased). The defendants are his nephews and nieces, their father being his brother. Plaintiff avers further that the land in dispute was acquired by his late Uncle Barima Ntuful from the chief of Ntankoful (Nana Ata Komfo II). According to Plaintiff, during the lifetime of said Barima Ntuful, he gave the disputed land to his mother (Maame Bosomtwi Basia) to put up a building on same and he was also put in charge of the said land. It is the case of the Plaintiff that his mother, the father of the defendants, and himself jointly put up a building on part of the disputed land even though his contribution was greater than the rest and that at all times material, the parties, and the family all knew that the property was for his late mother having been bought by late Barima Ntuful for her. It is the contention of Plaintiff that as the Administrator of the Estate of Barima Ntuful and the only surviving child of her mother, he is the beneficial owner or has a beneficial interest in the land in dispute. Plaintiff says that sometime in 2009, a portion of the disputed land was sold to cater for the medical expenses of the senior brother of the Plaintiff and because the

building was deteriorating and posing a danger to human habitation, he sold the land with the building sometime in 2017. Plaintiff avers that Defendants who are laying an adverse claim to the land have destroyed the foundation profile put up by the purchaser of the land, hence Plaintiff's claim.

The Defendants per their Statement of Defence filed on their behalf by the 2nd defendant deny that the Plaintiff is the administrator of the estate of the said Barima Ntuful. They further deny that the Plaintiff is called Charles Ackon and that it is rather their father who is called by that name. It is the case of the Defendants that the subject matter land in dispute was acquired by their father from the Ebiradzi family of Fijai and not from the chief of Ntankoful. They further contend that it was their father who put up the house on a portion of the disputed land at the time when the Plaintiff was in Nigeria. Defendants also deny that the disputed land and house on the same belongs to the mother of the Plaintiff thereby making the Plaintiff a beneficiary. It is the case of the defendants that the family has not met to decide on anything regarding the subject matter land let alone sell same. Defendants say that Plaintiff is not entitled to his claim.

At the close of pleadings, the issues that came up for determination are

1. **The capacity of the Plaintiff**
2. **Whether or not the disputed land property is the property of the Plaintiff's mother and her children or Defendants' father**

THE BURDEN OF PROOF IN CIVIL SUITS GENERALLY

As in all civil suits, the onus of proof first rests on the party whose positive assertions have been denied by his opponent. Depending on the admissions made, the party on whom the burden of proof lies is enjoined by the provisions of sections 10, 11(4), 12 and 14 of the Evidence Act, 1975 (NRCD 323) to lead cogent evidence such that on the

totality of the evidence on record, the court will find that party's version of the rival accounts to be more probable than its non-existence. Indeed, this basic principle of proof in civil suits expounded in **Zambrama V Segbedzie (1991) 2 GLR 221** has been subsequently applied in numerous cases including **Takoradi Floor Mills v Samir Faris (2005/06) SCGLR 882; Continental Plastics Ltd v IMC Industries (2009) SCGLR 298 at pages 306 to 307; Abbey v Antwi (2010) SCGLR 17 at 19 (holding 2); and Ackah v. Pergah Transport Limited and Others [2010] SCGLR 728**.

In **Ackah v. Pergah Transport Limited and Others** supra, **Adinyira, JSC** succinctly summed up the law, at page 736:

> *"It is a basic principle of law on evidence that a party who bears the burden of proof is to produce the required evidence of the facts in issue that has the quality of credibility short of which his claim may fail…It is trite law that matters that are capable of proof must be proved by producing sufficient evidence so that, on all the evidence, a reasonable mind could conclude that the existence of a fact is more reasonable than its non-existence. This is the requirement of the law on evidence under section 10 (1) and (2) and 11 (1) and (4) of the Evidence Act, 1975 (NRCD 323)."*

Thus, at the trial, Plaintiff bore the burden of producing evidence and the burden of persuasion on the issue as to whether or not the property in dispute is the property of the Plaintiff's mother and her children and not the defendants' father. The Plaintiff was required to lead evidence to establish his claim and if he failed the court ought to enter judgment against him. Essentially, the burden of producing evidence of the claim lay on Plaintiff.

The defendants do not have any counterclaim and therefore do not have any burden on them as that required by the Plaintiff.

ANALYSIS OF THE ISSUES

Before I delve into the main issue which is whether or not the disputed land belongs to the Plaintiff's mother or defendants' father, I wish to touch on the challenge to Plaintiff's name on the writ of summons raised by the defendants. The Plaintiff says he is called Charles Ackon, the defendants vehemently deny this claim and aver that it is rather their biological father who bears the name Charles Ackon. It must be noted that Plaintiff initially instituted this matter in the name of Charles Acquaye. It is not clear from the records at what stage the name was amended to read Charles Ackon for which reason this challenge has come up. Under cross-examination of the Plaintiff on the 22nd of January, 2019 at pages 10 and 11 of the record of proceedings below ensued.

Q. How did you get the name of (sic) Charles Ackon?

A. I travelled when I returned the said Charles Ackon gave me his labour card to use and that is what I used for all my official documents including SSNIT.

Q. I am putting it to you that it is fraud because being children from the same father and mother they could not have given you the same names.

A. It is not fraud that is what I used to work at Depaul and I used it till I went on pension for about 20 years.

Q. Why are you saying it is not fraud when my father used it in the same company so why is it not fraud.

A. It is not fraud

Q. What was the name your father and mother gave to you when you were born?

A. Kwamena Akwamu

Q. What English name were you given?

A. I was named John Ackon

From the above, it can clearly be seen that the Plaintiff's real name given to him from birth as he himself stated is Kwamena Akwamu, and John Ackon is his English name. He was never named Charles Ackon. He however impersonated his elder brother by using his name to work to deceive the public and to claim benefits which act is totally against public policy. Furthermore, there is no evidence before this court that Plaintiff changed his name at any point in time to reflect the name Charles Ackon he took upon himself. It is trite that if a person changes his name there must be a statutory declaration to that effect and subsequently same gazetted. In this instant case, however, there is nothing before this court to support same. I find that the Plaintiff is not Charles Ackon but has chosen to call himself as such.

The main issue to be considered therefore is whether or not the disputed property is for the Plaintiff's mother and her children or the Defendants' father.

In proving his case, Plaintiff testified himself and called two witnesses (PW1 and PW2). It is the case of the Plaintiff that the subject matter land forms part of the stool land of Ntankoful. Plaintiff attaches a site plan which is relabeled as **Exhibit "B"** in support. However, a careful look at this site plan does not indicate anything to that effect. There is no name on the said site plan. He however describes the boundaries of the said land in paragraph 5 of his statement of claim as follows:

> "*The land is located at Ntankoful and shares boundary with Mr. Eshun, Uncle Kojo Ben and another woman".*

The averment above was admitted by the defendants in their statement of defence as follows:

"Paragraph 5 of the statement of claim is admitted "

Therefore, from the above, the parties are ad idem regarding the identity of the disputed land. The difference however is that whereas the Plaintiff claims it forms part of the stool land of Ntankoful and was given to his Uncle by the Chief of Ntankoful, the defendants claim the land forms part of the Fijai lands belonging to the Ebiradze Family of Fijai. The Plaintiff called the chief of Ntankoful as his first witness since he was the one who purportedly granted the disputed land to his said Uncle Ntufu who in turn gave same to Plaintiff's mother. The evidence of PW1 per his witness statement filed on 8/1/2019 was very brief. I shall reproduce the same below for ease of reference

"*1. My name is Nana Ata Komfo II. I am the chief of Ntankoful and I live at H/No 36/2 Ntankofu chief palace, Ntankoful.*

2. I know the parties as subjects of my stool.

3. I know the subject matter land very well. The subject matter land forms part of my stool land.

4. That in the year 1979 on 20th January, I granted the subject matter land to one Barima Ntufu of Ntankofu due to his service (sic) the stool and the chief of Ntankoful thus (myself)

5. The subject matter land shares boundary with Mr. Eshun, Uncle Kojo Ben and another woman.

6. That I executed statutory declaration on 7/04/1982 to evidence the said grant. Attached hereto is a copy of the statutory declaration and marked Exhibit "SS"

STATEMENT OF TRUTH

1, NANA ATA KOMFO ii, verify that the contents of this statement are true to the best of my knowledge and belief

(SIGNED)

NANA ATA KOMFO II"

PW1 further tendered without any objection the said Statutory declaration mentioned in paragraph 6 above as Exhibit D. I shall reproduce same below

"STATUTORY DECLARATION ON ACT OF 1971.

I, NANA ATA KOMFO II, CHIEF OF NTANKOFUL VIA SEKONDI IN THE WESTERN REGION OF THE REPUBLIC OF GHANA do solemnly and sincerely declare as follows:

1. *That I am the declarant herein*
2. *That I am the Chief of Ntankoful via Sekondi in the Western Region of Ghana*
3. *That BARIMA NTUFU, the Omanpanyin in my palace as a result of devoted and dedicated service to my stool, I, NANA ATA KOMFO II by my own free will offered a PIECE OF LAND situate and lying at Ntankoful as a WAY OF GIFT on the 20th January, 1979.*
4. *That BARIMA NTUFU expressed his appreciation to such a kind gesture and presented "Customary drink" to my stool as a token, endorsing his occupation on the land freely without interference from any family member/quarters.*
5. *That the said land becomes the bonafide property of BARIMA NTUFU accordingly*

6. *That I make this solemn declaration conscientiously believing same to be true in accordance with the Statutory Declaration Act. No. 389 of 1971.*

DECLARED AT TAKORADI THIS 7TH DAY OF APRIL, 1982

(SIGNED)

NANA ATTA KOMFO II

DECLARANT

BEFORE ME

COMMISSIONER FOR OATHS *SEALED*

Clearly from the above, PW1 confirms that he gave the disputed land to Barima Ntufu (who happens to be the Plaintiff's uncle.) Amazingly, during the cross-examination of PW1 on 8/4/2019, after his witness statement had been adopted as his evidence in chief, PW1 turns around to contradict his own evidence on oath. The following transpired

Q. How do you know the land in dispute?

A. I know their father took the land

Q. Do you know the year my father took the land?

A. I can't remember the exact date around 1978 and 1979

Q. Did my father came alone or with some people

A. Charles Ackon came with his Uncle for the land

Q. Do you know the name of the uncle?

A. Ntsiful, but the land was taken in the name of Charles Ackon"

From the above, it can be seen there is a contradiction or conflict between the evidence of PW1 and his statement previously made in his witness statement as well as in Exhibit D. In **State v Otchere [1963] 2 GLR 463**, it was held that "*a witness whose evidence on oath is contradictory of a previous statement made by him whether sworn or unsworn, is not worthy of credit. Such evidence cannot, therefore, be regarded as being of any importance in the light of the previous contradictory statement, unless the witness is able to give a reasonable explanation for the contradiction"*. See the case of **Aidoo v The State [1963]2 GLR** 84,. In **Buor v the State [1965] GLR 1 SC,** it was held that "*if a witness has previously said or written something contrary to what he had testified at the trial, his evidence should not be given much weight*"

Applying the above principles to the fact of the case, PW1 in his previous statements (Exhibit D) executed in 1982 had indicated that he granted the disputed land to the Uncle of the Plaintiff, and that same was done voluntarily and the land was the bonafide property of Barima Ntufu. This statement is contrary to his evidence now that it was the defendants' father who went for the land. No explanation was given by PW1 in respect of the contradiction. To my mind, his evidence that he granted the disputed land to the father of the defendants clearly is an afterthought and I find it unworthy of consideration and belief and therefore I reject same.

It might seem that in light of this contradictory evidence by PW1 it might undermine the case of the Plaintiff and put the credibility of the witness in issue. However, it is trite that one is bound by his own deed and therefore PW1 is bound by Exhibit D. In **Hayfron v Egyir [1984-86] 1 GLR 682, CA**, it was held that "*Where there is in existence a written document and oral evidence on the same transaction, the rule is that the court should consider both the oral and documentary evidence, but to lean favourably towards the*

documentary evidence, especially where the documentary evidence is authentic while the oral evidence is conflicting"

Exhibit D was executed way back in 1982 by PW1 himself as chief of Ntankoful. He was asked the following:

Q: You executed Exhibit D

A: Yes

Q: It means you are bound by the documents are you aware?

A: Yes

There is no evidence before this court that said Exhibit D was procured by fraud or mistake. Further that there is no evidence or any reason why PW1 departed from his deed. In the absence of any such evidence, it would be difficult for the court to disregard the said Exhibit D. PW1 seemed to suggest the following explanation when he was treated as a hostile witness

Q. In Exhibit D by paragraph B you told us you freely gave the land to Barimah Ntsiful by virtue of his devotion to our stool.

A. That is not so. Charles Ackon is my mate in school so Ntsiful said he is taking the land for Charles Ackon. So I took them as belonging to one family. I gave the land for Nstiful to show Charles Ackon what he has to do"

It is my finding that despite the denial by PW1, I am not convinced by the explanation given by PW1 because it is not persuasive and it is demonstrably hollow. I find that the land in dispute was granted to the Uncle of the Plaintiff by PW1.

Assuming without admitting that PW1 granted the disputed land to Charles Ackon (the defendants' father) this evidence does not also support that of the defendants' who claim the land in dispute forms part of the Fijai lands belonging to the Ebiradzie Family of Fijai and that the father acquired same from Kukodo Ebiradzie family of Ntankuful. This family is different from the Stool of Ntankoful. Besides it is not the story of the defendant that it was PW1 who gave the land to their father. In any case, they emphatically say that the land does not even belong to PW1 anyway. In paragraph 15 of the witness statement of the 2nd defendant filed on behalf of the defendants he stated as follows:

"15 *I must also state that the subject matter land does not belong to Nana Atta Komfo and that it belongs to the Kukudo Ebiradze Family of Ntankoful who in turn granted same to our late father, Charles Ackon"*

Therefore, it is not the case that the evidence of PW1 is corroborating that of the defendants since their story is different.

Plaintiff further tendered **Exhibit "C"** without any objection to support his claim that his said Uncle also gave the land in dispute to his mother. I shall reproduce Exhibit C below

"STATUTORY DECLARATION ACT OF 1971

I MAAME BOSUMTWI BASIA OF HOUSE NO. 55/2 NTANKOFUL VIA SEKONDI IN THE WESTERN REGION OF THE REPUBLIC OF GHANA do solemnly and sincerely declare as follows:

1. That I am the declarant herein

2. *That the late Barima Ntufu who was one of the Ompanyin in the Ntankofu Palace was my brother.*

3. *That my said brother during his lifetime, gave-out PLOT OF LAND situate and lying at Ntankofu to me as a sister so that my children would support me financially to build (sic) house on the said land*

4. *That my children by name KOJO BOWOH, Kobina Akwamu and Kofi Nketsia jointly assisted me in the construction of the house*

5. *That I make this solemn declaration conscientiously believing same to be true in accordance with the Statutory Declaration Act No. 389 of 1971*

DECLARED AT TAKORADI THIS 9TH JUNE 2003 after the contents of the declaration had been read and explained in the Akan language when the declarant appeared to understand before thumbprint

THUMBPRINT

DECLARANT

BEFORE ME

COMMISSIONER FOR OATH"

It must be noted the said statutory declaration was never objected to by the defendants. From the above Exhibit "C", Barima Ntufu gave the land in dispute to the mother of the Plaintiff. She and her three children including Plaintiff and the father of Defendants put up the building on the said land. Exhibit "C" was executed in the year 2003 which means that at that time there was a building on the disputed land. This confirms the evidence of the plaintiff that the remaining three children together with their mother

put up the said building. To further support his claim that it was a joint effort the questions asked the Plaintiff under cross examination by the 2nd Defendant were key.

Q. You stated that the land was bought in 1979. At that time where were you?

A. I was in Ntankofu

Q. The time you returned from Nigeria was the land there or not?

A. It was there; I was given the land before I went to Nigeria.

Q. Do you remember when you returned from Nigeria there was a building on it and you took 1,000 blocks from my father?

A. It is not true, I started building before I left to Nigeria and I was bringing money for the construction. When I returned I sold my items for us to use to complete the building. My mother went for a loan for the building to be roofed and your father was given one room to live in."

I must say that the responses given by Plaintiff were never challenged under cross-examination by the defendants. The effect is that same is admitted. In **Quagraine V Adams [1981] GLR 599, CA,** it was held that "*where a party make an averment and his opponent fails to cross-examine on it, the opponent will be deemed to have acknowledged, sub silentia, that averment by the failure to cross-examine.* See also Browne v Dunn (1894) 6 R67.

Clearly, the building was put up through the resources of the Plaintiff's mother, Plaintiff himself and his siblings. In any case that has been the testimony of the Plaintiff throughout. I, therefore, find that the disputed land was given to Plaintiff's mother by Plaintiff's Uncle Barima Ntuful. I further find that the building on the said land was put up by the joint efforts of Plaintiff's mother, Plaintiff himself, and the father of the

defendants. That being the case it can safely be said that the disputed property assumed the colour of family property.

Family property is property belonging to members of a particular family – this includes the dead, the living and the unborn. The law recognizes different mode of acquiring family property. A family property may be acquired through purchase or gift granted to the family. Also, *where property such as land acquired by a member of a family is improved or developed with a structure or building which is substantially built or wholly built with income of members of the family or with income of a member of the family that property becomes a family property.* In **Mensah v S.C.O.A (1958)3 W.A.L.R. 336,** it was held by **Ollenu J** (as he then was) that by virtue of the assistance given by some members of the family, the property had become a family property in which the acquirers had only a life interest. Similarly, it was observed in **BOAFO VS. STAUDT (1958 UNREPORTED, ACCRA)** that:

> *"By custom where one member of a family acquires land for himself with his own money and other members of the family develop it with their money or labour by building on or farming it, the property acquires the character of family property."*

In the instant case, as I have already found, the land was granted to Plaintiff's Uncle Barima Ntuful by the chief of Ntankoful. Said Uncle gave the land to his sister Maame Bosumtwi (the mother of the Plaintiff and defendants' father's mother) during his life time and all of them put their resources together and constructed the building on the disputed land. Thus, the property in dispute acquired the character of family property and the defendant by virtue of their father's interest in the disputed property, thus also acquired the said interest. From the foregoing, I hold that H/NO T2 is a family property. That being the case it would therefore mean that none of the family members can do anything to the said property without recourse to the other family members who might

have an interest. Notably, the Plaintiff cannot purport to take decisions regarding the property without recourse to the Defendants since they also have an interest by virtue of the interest that their father had in the said property.

It is the case of the Plaintiff that the families of both parties took a decision to dispose of the remaining small portion of the disputed land with dilapidated building thereon and that the proceeds were shared but the defendants refused to take their father's share of the proceeds and are rather claiming adverse claim. This averment was vehemently denied by the defendants. The answers come out clearly under cross examination.

Q. Can you tell me where the parties met as you are saying that in 2007 the parties came together?

A. We did not meet because we waited for them but they did not come

Q. You are saying we did not meet so if you also say we refused to take our share what is your reason for saying that?

A. That is the reason why we informed our Ebusuapayin

Clearly, from the above, if there has ever been any decision regarding the disputed property, the defendants were not involved. This means such a decision was taken without recourse to the defendants who also have an interest in the disputed property. It is my considered view having declared the disputed property as family property any decision regarding same must be done in consultation with the Defendants.

The Plaintiff is claiming an amount of GH₵2,000 being the cost of two profiles purportedly destroyed by the defendants. The defendant denied this claim. The burden was therefore on the Plaintiff to have led evidence to establish this claim but he failed. In the circumstance, I fail to make any such order. The same will apply to relief 3, the

defendant cannot be restrained from dealing with the disputed property since they have an interest in same.

CONCLUSION

Having critically examined and analysed the facts and evidence, it is my considered view that the disputed land is the property of Maame Bosomtwi Basia and her children, which includes the Plaintiff and the father of the defendants thus the property assumed the character of a family property with both parties having an interest in same and not the personal property of Papa Nketsia or defendants' father.

There is no order as to cost

(SGD)

H/W ROSEMARY EDITH HAYFORD (MRS.)

MAGISTRATE

COUNSEL

EBO DONKOR FOR THE PLAINTIFF

DEFENDANTS UNREPRESENTED