

IN THE DISTRICT COURT HELD AT DZODZE ON TUESDAY THE 5TH OF
MAY,2023 BEFORE HIS WORSHIP NELSON DELASI AWUKU, DISTRICT
MAGISTRATE.

Suit No. A1/21/2016

SEGBEDZI AMANYO SUBSTITUTED BY
KOFITSE AKORLI

}

PLAINTIFF

VRS

MAMANYE GBETORNYEKU & 2 ORS.

}

DEFENDANTS

JUDGMENT

PARTIES

PLAINTIFF - PRESENT

DEFENDANTS – PRESENT

LEGAL REPRESENTATION

MARK ADZANU FOR PLAINTIFF PRESENT

INTRODUCTION/BACKGROUND:

The plaintiff filed a Writ of Summons on the 14th March, 2016 in this Court seeking the following reliefs;

- a. *Declaration of title, ownership and recovery of possession of all that parcel of land situate, lying and being at Ehi - Horme and bounded on all four sides by the property of the plaintiff.*
- b. *Perpetual injunction restraining the defendant by herself, her agents, assigns, workmen and privies from entering the disputed land.*
- c. *General damages for trespass.*

CASE OF THE PLAINTIFF

In a statement of claim filed on 12th December, 2016, the plaintiff stated that he is the customary successor of his father Amenyo.

The plaintiff stated that his ancestor Torgbui Goli who hails from Weta fought alongside the Penyi people in protecting Penyi land and after the war the Penyi people led by Torgbui Awasiame, Torgbui Kporkporte gave a large tract of land at Ehi to him in appreciation for his support during the war.

The plaintiff stated that Goli gave birth to Eya who gave birth to Amable and Amable also gave birth to Eze his grandfather from whom his father Amenyo inherited.

The plaintiff stated that the land founded by his ancestor Goli is bounded as follows;

- i. On the first side by Weta land occupied by Agbasaklimah and Ashiakpor
- ii. On the second side by Klikor land occupied by Torgbui Addo
- iii. On the third side by Torgbui Korsorku and
- iv. On the fourth side by Penyi land occupied by Awasiame and Kporkporte.

The plaintiff stated that the portion of the larger land in dispute is bounded on all the four sides by Torgbe Goli's larger land.

The plaintiff stated that his predecessors stayed on the land in dispute and the larger land without any hindrance until the plaintiff was sued by one Agbotsoka of Anyiwome before this court which matter he failed to prosecute.

The plaintiff stated that he has been on the disputed land with his children for so many years until the 1st defendant trespassed on it and when confronted stated that, she rented the land from Kumah Semador.

THE CASE OF DEFENDANTS

In his defence filed on 4th January, 2017 the defendants denied the claim claim by the plaintiff that his ancestor named Goli fought alongside the people of Penyi in protection of Penyi land.

The Defendants also denied the claim that a large tract of land was given to Goli the plaintiff's ancestor by Torgbui Awasiame for his contributions in securing the Penyi land.

The Defendants denied the claim by the plaintiff that he has been in possession of the land and ploughed same after the death of Agbotsoka.

The Defendants stated that the land in dispute was owned by Torgbui Ago of Weta whose daughter Awalofui got married to Amugi from Atiavey and they gave birth to Goli who settled at Ehiaga.

The Defendants stated that Goli gave birth to Vinu, Dayi, Yaa, Eworsa and Dotseku and all the five children shared their father Goli's land at Ehiaga.

The Defendants stated that Eworsa gave birth to Gbogbolulu who gave birth to Akamaku the father of Vormawor and Semador.

The Defendants averred that Vormawor had no child but his brother Semador had three children namely, Kwasi Semador, Yao Semador and Dagoe Semador but Yaovi Semador also had no child and his brother Kwasi Semador did not also stay at home.

The Defendants averred that Yaovi Semador mortgaged part of the disputed land to Kwakutse Ekpore Kpedegbo, father of the co-defendant.

The Defendants averred that Yaovi Semador was able to redeem the mortgaged land later mortgaged to the 1st defendant by Dadzidogbor after the death of his father Kwakutse Ekpore.

The Defendants averred that it was after the land had been mortgaged to the 1st defendant that the plaintiff summoned her before Torgbui Gbeshigbe and they went to give evidence in her support but the plaintiff who was not satisfied commenced another action before this court.

The Defendants averred that their land which is situated at Ehi-Tadzi is bounded as follows;

On one side by the property of Dotse Zonyra

On another side by the property of Eklun Kporio

On another side by the property of Ameyeduga and Yaa Abla and

On the last side by the property of Akakpo Dogbo which land the Penyi – Ehi road passes through.

The defendants stated that Goli's inherited land was shared among his five children Vinu, Dayi, Yaa, Eworsa and Dotseku and that the portion of the land in dispute was the share of Eworsa which devolved through his son Semador to their family.

The defendants stated that the disputed land is their family land and that they released same to the 1st defendant to cultivate.

PROCEDURAL HISTORY

The writ in this suit was issued on 14th March, 2016 by the Plaintiff Segbedzi Amanyio against Mamanye Gbetornyeku as the defendant.

By the order of the court dated 15th August, 2016 Francis Yao Senanu and Torgbui Adza Dzikunu were joined to the suit as 2nd and 3rd Defendants.

Following the demise of the plaintiff, Kofitse Akoli was substituted with him upon the court's order.

The case commenced before His Worship Lawrence Buenor Buer and was taken over by His Worship Derrick Pardon Eshun and Her Worship Rejoyce Aseye Gadago.

Proceedings were adopted before me on 29th September, 2022 and hearing continued with further cross examination of the 2nd defendant.

ISSUES

From the pleadings filed by the parties the following issues were set down for determination;

1. Whether or not the land in dispute is owned by Torgbui Goli?

2. Whether the plaintiff or his family have been in possession of the land in dispute without hindrance?
3. Whether Goli had only one child by name Eya through whom the plaintiff claims his inheritance?
4. Whether or not Goli had other children among whom his land was shared?
5. Whether Goli had a child by name Eworsa through whom the defendants inherited the land in dispute?

BURDEN OF PROOF

The plaintiff who asserts usually has the burden of proving same on a preponderance of probabilities. Preponderance of probabilities according to section 12(2) of the Evidence Act (NRCD 323) means;

“that degree of certainty of belief in the mind of the tribunal of fact or the court by which it is convinced that the existence of a fact is more probable than its non-existence”

Where the plaintiff has been able to lead sufficient evidence in support of his case, then the burden is upon the defendant to lead sufficient evidence in rebuttal or risk being ruled against on the issues.

Under section 11(4) of NRCD 323, a party discharges the burden of producing evidence when the party produces sufficient evidence so that on all the evidence a reasonable mind could conclude that the existence of the fact was more probable than its non-existence.

In Okudzeto Ablakwa (No. 2) v. Attorney General & Obetsebi Lamptey (No. 2) [2012] 2 SCGLR 845, the Supreme Court in dealing with the burden of proof held as follows;

“he who asserts assumes the onus of proof. The effect of that principle is the same as what has been codified in the Evidence Act, 1975 (NRCD 323), s 17 (a)...What this rule literally means is that if a person goes to Court to make an allegation, the onus is on him to lead evidence to prove that allegation, unless the allegation is admitted. If he fails to do that, the ruling on that allegation will go against him. Stated more explicitly, a party cannot win a case in Court if the case is based on an allegation which he fails to prove or establish”.

The Court is also mindful of one of the cardinal duties of a Court in evaluating evidence led during trial which is for the Court to assess all the evidence on record in order to determine in whose favour the balance of probabilities should lie. See the cases of **Adwubeng v. Domfeh [1996-97] SCGLR 660** and **Takoradi Flour Mills v. Samir Faris [2005-2006] SCGLR 882**.

SUMMARY OF EVIDENCE

The plaintiff relied on the evidence of the original plaintiff, Segbedzi Ameyo and Anumu Yadzaka as PW1.

The defendants also relied on the evidence of the 2nd defendant Francis Yao Senanu, Lawrence Semador Kuma(DW1), Kofi Tsiamiga Dogbo (DW2) and Kwashie Dagba (DW3).

The defendants also relied on the following evidence which were tendered and adopted by the court;

- a. Exhibit 1 – A site plan of the property of Lawrence Semador Kumah situate at Tadzi-Ehi.
- b. Exhibit 2 – A letter by Komla Kobolo Yevudeti, Robert Kwasi Tornuxi and Kpete Morkey dated 15th August, 2000.
- c. Exhibit 3 – A letter by Kormla Kobolo Yevudeti, Robert Kwasi Tornuxi and Michael Kordzo Morkey.
- d. Exhibit 4 – A letter by Segbedzi Avudra Amenyo dated 20th September, 2013 headed “Trespassing and notice to vacate land”.
- e. Exhibit 5 – A letter by Francis Yao Senanu dated 28th September, 2013 headed “Re – Trespassing and notice to vacate land”.

ANALYSIS

Issue One (1) and three (2): Whether or not the land in dispute belong to Torgbui Goli and whether the plaintiff or his family have been in possession of same without hindrance?

It is the case of the plaintiff that the land in dispute forms part of the larger land gifted to his great grandfather Goli by Torgbui Awasiame for his contributions towards securing the Penyi land.

The plaintiff claims that it is part of this land which he inherited through Eya his great grandfather and Amenyo his father that is the subject matter of the action before this court.

This assertion is denied by the defendants who also claim that the land was originally owned by Torgbui Ago of Weta the great maternal grandfather of Goli.

The defendants stated that Goli's inherited land was shared among his five children Vinu, Dayi, Yaa, Eworsa and Dotseku and that the portion of the land in dispute was the share of Eworsa which devolved through his son Semador to their family.

The defendants stated that the disputed land is their family land and that they released same to the 1st defendant to cultivate.

The evidence of the defendants although was in disagreement of the narration that the land was originally gifted to Torgbui Goli as a reward for his contribution towards securing the Penyi land, admitted that the land at some point was in the possession of Torgbui Goli. Their version of the narration was that Torgbui Goli rather than being the original owner to whom it was gifted also inherited the land his grandfather Torgbui Ago of Weta.

The fact that the land was founded by Torgbui Goli was actually corroborated by the Defendant's own witness Lawrence Semador Kuma (DW1) in paragraph 5 of his witness statement when he stated that *"I know the land in dispute and it was founded by my great great grandfather Torgbui Goli many years ago"*.

It is an established principle that where the evidence of one party on an issue in a suit was corroborated by witnesses of his opponent, whilst that of his opponent on the same issue stood uncorroborated even by his own witnesses, a court ought not to accept the uncorroborated version in preference to the corroborated one unless for some good reason which must appear on the face of the judgment the court found the corroborated version incredible or impossible. **See the cases of Asante v Bogyabi [1966] GLR and Met Capital Group Limited vs. Guaranty Trust Bank Ghana Ltd. and Linksfield Ridge Realty Ltd. [2021] DLSC10763 at page 6 Per Owusu (Ms), JSC.**

On the basis of the principle above, the court finds the corroborated evidence of the plaintiff that Goli is the original owner of the land more acceptable since the defendant's claim about Torgbui Ago was not substantiated.

However, the plaintiff's claim that his father inherited the land through Eya who he mentioned as the only child and beneficiary of the estates of Goli and the fact that his fathers and himself rather than any other persons have been in possession of the land is a matter subject to proof.

In **Klah v. Phoenix Insurance Co. Ltd [2012] 2 SCGLR 1139** it is held that, *"Where a party makes an averment capable of proof in some positive way e.g. by producing documents, description of things, reference to other facts, instances and his averment is denied, he does not prove it by merely going into the witness box and repeating that averment on oath or having it repeated on oath by his witness. He proves it by producing other evidence of facts and circumstances from which the court can be satisfied that what he avers is true"*.

The onus therefore was on the plaintiff was to call witness or adduce substantial evidence to prove the claim that the land has been owned, controlled and possessed by Eya his great grandfather and later devolved to him.

The evidence given by the plaintiff was traditional in nature and made up of narrations which predate both himself and the defendants.

In **Abakam Effiana Family v. Mbibado Effiana Family [1959] GLR 326**, the principle was established that, where it appeared that the evidence as to title was mainly traditional in character on each side and there was little to choose between the rival conflicting stories the person on whom the onus of proof rested must fail in the relief being sought for.

However, the practice by the courts has been that, whenever there is a dispute over property acquired several years ago and none of the parties and their witnesses could give eye witness accounts or the acquisition of the property has a long standing history, the evidence given by the parties is not used to discredit them. Rather, the court examines their evidence with undisturbed overt acts of long possession or occupation or judgments that have been obtained in respect of the land.

In the case of **In re Taahyen & Asaago Stools; Kumahin II (Substituted by) Oppon v. Anin [1998-99] SCGLR 399**, the Supreme Court summed up the importance of ownership or possession of the disputed land over traditional evidence thus;

“In assessing rival traditional evidence, the court must rather examine the events and acts within living memory established by the evidence, paying particular attention to undisputed acts of ownership and possession on record; and then see which version of the traditional evidence, whether coherent or incoherent, is rendered more probable by the established acts and events. The party whose traditional evidence such established acts and events support or render more probable may succeed unless there exists on the record of proceedings, a very cogent reason to the contrary. And the presumption of title raised by acts of possession and ownership appears now as section 48 of the Evidence Decree, 1975 (NRCD 323). It follows from that provision that a party can succeed in his claim even if his traditional evidence is rejected”. See also the cases of **Yaw v Atta [1961] GLR 513** and **Comfort Offeibea Dodoo v. Nii Amartey Mensah (Civil Appeal Suit No. J4/12/2019) [2020] Unreported SC (5th February, 2020) Dotse JSC**

In his evidence in chief to the court, the plaintiff mentioned the boundary owners to the land as Torgbui Ahiakpor and Agbasah Klimah on one side, Abashiamé and Kokote on the second side, Torgbui Koshoku on the third side and Torgbui Addo on the fourth side.

The plaintiff claimed that his father farmed on the land and he himself also farmed on same and that his great grandfather Goli also set up a market on the land called Goli market.

Under cross examination on 25th April, 2017 the plaintiff also stated that his family gave portions of the land to Kloyoe Agbanyo, Daglohu Havor and Gbetornyeku Gadzo.

The plaintiff's claims in respect of the boundary owners mentioned and acts of possession and control such as the establishment of the market and disposition of portions of the land to various people were matters capable of prove.

However, the plaintiff relied solely on the evidence of PW1 as his sole witness. The evidence given by PW1 was also made up of narrations and stories he alleged was told him by his ancestors. Such evidence falls within the realms of hearsay and only admissible under the rules of exception.

For the purposes of emphasis, portions of the averments of PW1 in his evidence in chief are reproduced below;

"The land in dispute is situated at Ehi. It is owned by us, according to what my ancestors told me this land used to be part of the Penyi land but something happened and the land was used as payment to the Ehi people. The land in dispute belongs to Awashiame originally, who begat Kpokoteh.

I do not know anybody called Torgbui Goli even though I have heard of him before. This Goli assisted Awashiame in driving away some intruders during a war and after that Awashiame gave the disputed land to Goli as a means of appreciation for his support to him during the war. This land given to him is called Ehi land. 'Ehi' means 'paid'".

As stated earlier, in assessing rival traditional evidence, the court must examine the events and acts within living memory established by the evidence, paying particular attention to undisputed acts of ownership and possession on record and then see which version of the traditional evidence, whether coherent or incoherent, is rendered more probable by the established acts and events.

The plaintiff failed to call material witnesses or adduce substantial evidence to prove any of his alleged acts of possession. His witness also only repeated what he claimed to have been told.

The evidence of PW1 was further weakened when he admitted under cross examination on 26th June, 2018 that he does not know anything about the disputed land.

Q. Do you own land at Ehi?

A. No

Q. Have you ever been to the disputed land before?

A. No

Q. So it means you do not know anything about the disputed land?

A. That is so. But there is a reason

Q. What is that reason?

A. The reason is that when the Ehi land was given to the Goli people we were asked never to step there.

Section 80(2) of the Evidence Act, 1975 (NRCD 323) provides that one of the factors to consider in determination of the credibility of a witness is the substance of the testimony and in evaluation of the substance, it is trite in law that, a witness is required to testify on matters which he has knowledge of and not on what he heard others say subject to the rules on hearsay evidence.

The court therefore on the basis of the above concerns holds that the plaintiff failed on the burden to provide evidence or call material witnesses to substantiate on the balance of probabilities the acts of ownership and possession alluded to by him.

Issues three (3), four (4) and five (5): Whether Goli had only one child by name Eya or there were other children among whom his land was shared and whether the land in dispute was in possession of Eworsa through who the defendants claim ownership?

The court finds that issues 3, 4 and 5 border on similar facts and requires evidence to prove that Goli had other children and this particular land falls within the allocation of Eworsa.

The fact that Goli had other children including Eworsa is a matter which did not require further proof because of the plaintiff's admission.

In his evidence in chief to the court on 6th April, 2017, the plaintiff admitted that he is aware Goli gave birth to Vinu, Dayi, Yaa, Eworsa and Dotseku and that Goli shared his land among them which is different from the one in dispute.

The plaintiff further admitted that the land shared by Goli to his other children was his own land situated at a location in Ehi. This claim raises concerns about the nature of the plaintiff's claim. If he referred to lands allocated to the other children as Goli's own land, then what was the nature of Goli's ownership of the one he seeks to claim.

The issue of how Eya alone came into exclusive ownership of Goli's larger land which he claimed is different from what the other children were allocated was also not supported by any evidence

A defendant who files a counterclaim assumes the same burden as a plaintiff in the substantive action if he is to succeed. See **Nortey (No.2) v. African Institute of Journalism and Communications & Others (No. 2) [2013-2014] 1 SCGLR 703**

The defendants called one Kofi Tsamiga Dogbo (DW2) as a witness who claimed to have a land that border the land in dispute and have always known the Semador family as the owners of the land.

Kwashie Dagba also gave evidence as the third witness for defendants and stated that he is a linguist to Torgbui Shikpa before whom the matter came for settlement.

The defendants in this case did not file a counterclaim which would have placed an equal burden on them to prove ownership. The bigger burden therefore lied on the plaintiff which could not be discharged on the back of weaknesses in the case of the defendants.

On the issue of the claim by DW3 that the matter was earlier settled by way of customary arbitration by Torgbui Shikpa IV was not challenged by the plaintiff. The plaintiff did not

challenge the fact that he submitted himself to the process but only stated that he challenged the competence of the panel during the process.

The following were the responses of DW3 under cross examination by counsel for plaintiff on the issue on 3rd March, 2023;

Q. Do you know whether the alleged award published was reduced into writing?

A. It was written

Q. If you see a copy of the said award would you be able to identify it?

A. I can't but when it is read to me I will recognize it

Q. I put it to you that no award was published in favour of the defendants?

A. An award was published in their favour

Q. You will agree with me that during the said arbitration Segbedzi Amenyo raised an issue about the competence of the panel to go into the matter?

A. Yes he did

Q. However the court went ahead and dealt with the matter not so?

A. Yes

Q. I put it to you that the decision of the arbitration panel of Torgbui Shikpa IV was to the effect that the land in dispute belongs to the entire family of the plaintiff and not for him alone?

A. That was not the decision

The issue before the court is not for the enforcement of the customary arbitration award but to the extent that counsel for plaintiff seeks to take credence for the decision of the panel means that the plaintiff may have raised issues about the competence of the panel but went ahead to submit to the process.

In Exhibit 6 which is a copy of the arbitration report tendered by the defendants through DW3, the verdict of the pane was captured as follows;

“i. That Segbedzi Eze Amenyo had no personal ownership of the said piece of land.

ii. That he is not the only surviving descendant of Torgbuiga Eya Goli.

iii. That he was only trying to acquire the land forcefully and illegally not for the entire Eya Goli family but for his own which should not be allowed to happen.

iv. The court advised that no descendant of the entire Eya-Goli family should send any case on the Eya-Goli lands to any shrine for settlement since the outcome will affect the entire family.

v. Finally, Segbedzi was rebuked for showing disrespect to the court in general and Torgbui his own divisional chief in particular”.

The effect of that award casts further doubt on the plaintiff's capacity in terms of the nature of the land he seeks to claim in his individual capacity.

CONCLUSION

There being no other issues arising from the pleadings and evidence, Judgment will be entered for the Plaintiffs as follows;

- a. The plaintiff's reliefs are dismissed for failing to provide substantial evidence and material witnesses to prove his case.
- b. Cost of One thousand cedis (GH¢1,500.00) is settled in favour of the Defendants.

NELSON DELASI AWUKU

MAGISTRATE