

SITTING IN THE DISTRICT COURT AT WENCHI IN THE BONO REGION ON
WEDNESDAY THE 4TH DAY OF JANUARY, 2023, BEFORE HER WORHSIP VIVIAN
YAMUSAH LARIBA (MAGISTRATE)

SUIT NO. A1/13/22

BETWEEN

NANA ADU SEKYERE SUING AS THE CUSTOMARY)

SUCCESSOR TO THE LATE TWENEBOAH-KODUAH) PLAINTIFF

OF THE ATOBRA ROYAL FAMILY OF NWOASE)

VRS:

OPANIN KUDOM KWAKU OF NWOASE) - DEFENDANT

J U D G E M E N T

The plaintiff herein as per his writ of summons filed on the 18th day of February, 2022 sought from this court and against the defendant herein the following reliefs;

- (a) A declaration of title to and recovery of possession of all that piece of farmland situate, and being at a place commonly known and called "NKRUBIO" on Nwoase stool lands and bounded by the properties of the late Kwame Bano, the late Ama Brimaa and a path leading to Bonkaa respectively.
- (b) A declaration of title to and recovery of possession of all that parcel of farmland situate and being at a place commonly called "Bonkaa" on Nwoase stool lands and bounded by a path leaving to "Bonkaa", the late Op. Kwame Bano, Op. Abuu Akete and Maame Appiagyei, respectively.

(c) Declaration of title to and recovery of possession of all that piece of farmland situate and being at a place called and known as “Konkomba” on Nwoase stool lands and bounded by the properties of Konkomba village, KwasiDuku and Tawiah respectively.

(d) General damages for trespass.

(e) Perpetual Injunction restraining the defendant his assigns, agents workmen, privies, etc. from entering or interfering with the plaintiff’s said farmland.

From the parties pleadings filed, the court set the following issues down for trial.

- (1) Whether or not the said disputed land described by the plaintiff in his writ of summons are the property of the plaintiff’s Atobra Royal Family;
- (2) Whether or not the plaintiff and his said family have any title to the disputed lands;
- (3) Whether or not the defendant herein committed any act of trespass onto the disputed farmlands;
- (4) Whether or not the plaintiff is entitle to a recovery of possession of the said disputed lands.
- (5) Whether or not the plaintiff is entitle to any general damages for the any trespass.
- (6) Whether or not an order will lie for an injunction against the defendant herein.

The totality of the evidence of the plaintiff in proof of his claims consisted of his evidence in-chief and the testimony of his sole witness.

The plaintiff said he is Adu Sekyere and he is a teacher and lives in Wenchi. That the disputed land was originally acquired by the late Yaw Ameyaw, Kwaku Sekyere and Kwabena Ofori in its virgin state on Nwoase Stool Lands. That the land at "Nkrubo" shares boundary with the late Op. Kwame Bano and Ama Bremaa (who is also family member) and then the path leading to Bonkaa village.

That the land at "Bonkaa" shares boundary with the late Op. Kwame Bano, Maame Appiagyei and Op. Abuu Akete. Then whiles the "Konkomba" land shares boundary with Kwasi Dukuu and Tawiah who are also members of the family.

The plaintiff said when Yaw Ameyaw, Kwaku Sekyere and Kwabena Ofori died Op. Kwame Mari succeeded them and took custody of the lands mentioned above. Then when Op. Kwame Mari died, Op. Kwame Boampong succeeded him. Then Op. Koo Manu also succeeded Kwame Boampong. Then Tweneboah Koduah also succeeded Koo Manu, as the Ankobeahene of Nwoase Traditional Area.

The plaintiff said upon the death of Tweneboah Koduah he (plaintiff) succeeded him as the Ankobeahene of Nwoase Traditional Area and currently the custodian of the disputed lands. That various portions of the lands are being cultivated by family members. That the defendant herein who is also a member of the Atobra Royal Family is abusing the laws of the lands and acting arbitrary. That the defendant knowing very well that dogs and sheep are forbidden on Nwoase land, brought same to perform rituals which is against the traditions of the Nwoase land. That defendant also brought guinea fowls to the land and which are also a taboo. That defendant having been cautioned failed to heed the caution that the matter was initially sent to the police station.

That the defendant also kept going to the farm on Wednesdays and Fridays knowing very well that those days are sacred in the town of Nwoase and no one is

supposed to do so. That the chief priest and his elders invited the defendant for the necessary rituals to be performed but defendant again refused.

Plaintiff said because of all these the defendant withdrew his membership of the Atobra Royal Family and does not attend any family meeting or contribute in any way to the welfare of the family. That defendant does not attend any gathering of the family and so the family decided to also take its lands back. That the defendant gave a portion of the land at "Nkrubio" to his daughter Agyeiwaaa without the consent of the family. The plaintiff stated that it is the prayer of the family that the land be taken back from the defendant so the family can have its land back.

Plaintiff's sole witness said she is Akua Amponsa and that she is a farmer and lives at Nwoase. That she knows the parties. That plaintiff is her grandson whiles defendant is her (P.W.1) sister's son. P.W.1 said she knows the lands in dispute which are of three different places, namely "Nkrubio", "Bonkaa" and "Konkomba Village and which lands are family lands. That the lands belong to their Atobra Royal Family of Nwoase which of the plaintiff herein (Nana Adu Sekyere) is the successor. That the defendant has been violating the customs and traditions of Nwoase in spite of warnings from the chief priest of Nwoase. That defendant also gave a portion of the family land to his daughter, Akosua Agyeiwaa without the consent of the family. That when the elders of Nwoase invited the defendant he refused. That the family persuaded defendant to go as the lands could be taken from the family but defendant refused. That because of these the defendant withdrew his membership of the Atobra Royal Family and has failed to contributed to the welfare of the family.

In his evidence in-chief, the defendant told the court he is Kudom Kwaku and that he lives at Nwoase and is a farmer. That he knows the plaintiff who is his nephew. That he (defendant) also knows the lands in dispute (the three separate lands).

That the plaintiff is not the custodian of the said lands. Defendant said the land at “Bonkaa” was gifted to his (defendant) late father by Alhaji Jakariya of Akete in the year 1969 with witnesses present to that effect. Defendant said he was born at Nwoase and he has been living there for the past sixty years (60years) and has been abiding by all the rules and bye-laws of the town. Defendant said he admits that on the said date to harvest his vice but not to work. Then later once Kwabena Frimpong came to his (defendant) house with other people saying the Sanahene of Nwoase has sent them to come and fine him (defendant) for following one of their bye-laws of the town. That instead of the fine, they took the two (2) bags of rice away. Defendant said he reported the said Kwabena Frimpong and the Sanahene to the Nwoase police and after the police invited them the matter ended there.

That it was after the police case that the plaintiff brought him (defendant) to court for refusing to apologise to the chiefs and to perform the rituals. Defendant said the allegation against him are not true. That in Nwoase now people go to farm on Fridays and Wednesdays and are also rearing guinea fowls. That he (defendant) has been accused of all these because he is a Christian. Defendant therefore prayed the court to dismiss the claims of the plaintiff.

Defendant’s sole witness (D.W.1) was one Agatha Donkor who said she is a farmer and lives at Nwoase. That she (D.W.1) knows the parties. That the defendant is her (D.W.1) husband and the plaintiff is defendant’s nephew. The witness said she knows the disputed lands. That she (D.W.1) and the defendant have been married for 23 years now and cultivated cocoa and cashew for 23 years now.

D.W.1 said one Madam Gladys Frema once met her (D.W.1) that the Sanahene sent her to tell her (D.W.1) defendant does not respect the authorities at Nwoase and so will lose all the land he is on.

Then on another occasion the same Madam Gladys Frema came and told her (D.W.1) to tell the defendant to uproot the maize defendant planted on the land behind a church in the town and that defendant should not step on the land again.

That the said land belong to the Sanahene who sent her.

After a very careful evaluation of all the evidence it is important to observe that the plaintiff stated that the disputed lands is the property of the Atobra Royal Family of which he is the current head and custodian of the properties of the said family including the disputed lands. This was corroborated by plaintiff's sole witness who said she is a member of the said Atobra family and therefore related to plaintiff and the defendant who are also from the family with the plaintiff herein being the current custodian of the properties of the family including the land in dispute. The defendant without disputing the ascertainment made by the plaintiff on the Atobra family's ownership of the three different lands in dispute the defendant only stated that the land at "Bonkaa" was given to his (defendant) late father by one Alhaji Jakariya of Akete in the year 1969 in the presence of witnesses. This claim by the defendant was however not been proved and so this court could not find any evidence either to confirm or establish the defendant's claim that the "Bonkaa" land which is part of the three disputed lands was given to his (defendant) late father and therefore is his father's property. Contrary to the claim by the defendant, relative to the said "Bonkaa" land, the plaintiff and his witness (Akua Amponsah), P.W.1 have clearly traced their Atobra Royal Family's root of title to the three lands in dispute with their boundaries well defined. This means the identity of the dispute lands has also been established without any doubt.

Here again, it must be pointed out that if the defendant claimed his father owned the "Bonkaa" land as was gifted to him by the said Alhaji Jakariya in the presence of

witnesses, why defendant did not call any of the said witnesses to testify remains unclear and therefore rendered the said claim unsubstantiated.

It is again important to note that the plaintiff stated that in spite of his family's ownership of the disputed lands members of their family have cultivated various portions of the lands including the defendant herein until he (defendant) denounced his membership of the family. This presence of the members of the family on various portions of the land again established the fact that the plaintiff and his family are not only owners of the disputed lands but are also in effective occupation of same as each member worked on their portions subject to their membership of the family and a clearly recognition and acceptance of the family's ownership of the said land.

This is one other important determinant of or incident of ownership of land. That is the evidence of effective possession.

The plaintiff, it must be noted provided evidence to the effect that the defendant herein as a member of the plaintiff family, later denounced his (defendant) membership when he refused to pay allegiance to the family and continuously refused to attend upon the family and to contribute to the welfare of the family and its other members. This the plaintiff said was after the defendant blatantly violated all customs and practices of the larger community of Nwoase and thereby setting the family against the entire community as the family was ultimately held for failing to call defendant to order.

That this conduct of the defendant was what necessitated the family's effort to call defendant to order and which the defendant failed to heed with his result and renunciation of his membership and allegiance to the Atobra Royal Family. Clearly, having therefore taken himself, out of the family, with his refusal to honour all the invitations extended to (defendant) to be heard, then made defendant's continuously

stay on the family lands untenable. If defendant no longer owes any allegiance to the family then he can no longer stay and work on the family land. Indeed the defendant herein has not provided any contrary evidence to the one led by the plaintiff and his witness (P.W.1) that defendant totally became a rebel against the family and effective had nothing again to do with the Atobra family and its members.

Finally, it is instructive to state that every member of a family acquires rights and privileges under his family and which rights and privileges are absolutely untested as long as the member recognizes and subscribes to the dictates of the family as a Unit with which he or she owes allegiance. Any failure on the part of the member to up hold these tenants obviously will deprive the member his rights and privileges under the family unit. If the defendant herein violated the rules of custom and practices as pertained to the people of Nwoase, and for which reason the elders called upon his family to call him (defendant) to order, it was for the defendant to submit himself to the processes in the family.

That was the only way and means by which he (defendant) could be heard. If the defendant however refused to answer the calls of his own family and no longer owes the said family any allegiance then, he cannot also demand and for that matter receive any benefits from the family and this includes enjoyments of the properties of the family.

From the evidence as adduced before me, I found the following as facts.

- (1) That the parties herein (plaintiff and defendant) are members of the Atobra Royal Family of Nwoase.
- (2) That the plaintiff herein is the current head and custodian of the properties of the family.
- (3) That the disputed lands are the property of the said Atobra family.

- (4) That the defendant herein, had some issues with the elders of the town (Nwoase) and the family, leading to the withdrawal of his (defendant) allegiance to the family as defendant now has nothing to do with the family.
- (5) That in spite of this conduct, defendant still remains on portions of the lands of the Atobra family.

A party in a civil suit carries the burden of proof if the party in his/her writ of summons or pleadings lay claims or raise issues that are essential to the success of the said claims.

See; *Faibi Vs State Hotels Corp* {1968} GLR, 176.

Thus burden is imposed on the said party Under Section 11 (4) of the Evidence Act, 1975, (NRCD 323) which states that; Section 11 (4) “in other circumstances 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 the fact was more probable than its non-existence”.

The law as stated requires the party carrying the burden to produce sufficient evidence to make out a claim on a preponderance of probabilities as defined in section 11 (4) above.

This is the persuasive burden as set out in section 12 (1) of NRCD 323 as follows;

Section 12 (1) “Except as otherwise provided by law, the burden of persuasion requires proof by the preponderance of probabilities.

This is further defined in Section 12 (2) of NRCD 323 as “the degree of certainty of belief in the mind of the court by which the court is convinced that the existence of the fact was more probable than its non-existence”.

It is therefore trite that in civil trials the standard burden of proof is proof on the preponderance of probabilities. That is to say, a party must win on the merits or strength of their case.

It is also the as set out in the case of Kwahikrom Vs Mmonyi [2010] 28 MLRS, 183 CA that in a claim of ownership of land, the party laying the claim must prove;

- (a) His/her root of title;
- (b) Incidence of acquisition and.
- (c) Evidence of acts of unchallenged possession.

On the principle of property or customary law, the Supreme Court held in the case of Amoabimaa Vs Okyir {1965} GLR, at 63-64 (SC) that;

- (i) A subject of a stool or member of a family who is in occupation of stool or family land acquires a determinable or usufructuary title to the portion he so occupies. This right of exclusive possession is in the nature of inheritable free hold estate, which continues indefinitely so long as the occupier acknowledges his allegiance to the stool or family----“
- (ii) A hostile entry by a stool or family on stool or family land in possession or occupation of a subject or member of family as the case may be in contrary to the principles of customary law and is unlawful.

Then holding (111) states; “a subject of a stool or member of a family in occupation of stool or who denies allegiance to the stool or family may forfeit his right of occupation by such misconduct, forfeiture is however not automatic (If is an extreme punishment which may in the discretion of the elders be inflicted upon the occupier after an enquiry in which he is given an opportunity of stating his case”.

In this instant case and as per the evidence before me, the conduct of the defendant herein constituted a gross violation of the authority and Collective Unity of the said Atobra Royal Family as he (defendant) blatantly denounced and will not even honour the numerous invitations extended to him to enable the elders give him (defendant) a fair and just hearing. And once the defendant herein no longer owe any allegiance to the said family and will not also have anything to do with it, it means the defendant has elected to stand alone.

This then makes his (defendant) stay on any portion of the family's land untenable. Having therefore considered all the evidence and the law as stated above, it is my considered conclusion that the plaintiff herein has proved his claim against the defendant and judgment has been entered for the plaintiff.

The reasons for the above conclusion include;

- (1) That the disputed lands are the property of the plaintiff's family.
- (2) That the plaintiff satisfactorily traced his family's title (root of title) to the lands.
- (3) That the identity of the lands as provided by the plaintiff went Under alleged;
- (4) That the defendant also as a member of the plaintiff's family was on various portions of the lands.
- (5) That the defendant has issues with the family and which issues they could not resolve.
- (6) That the defendant due to the unresolved issues denounced his membership of the family and no longer owe any allegiance to the family and that constituted a misconduct;
- (7) That the plaintiff proved the claims as required by law.

The following Orders or declarations are consequently made;

- (1) That the lands described by the plaintiff in his particulars of claim are the properties of the plaintiff and his Atobra Royal Family of Nwoase.
- (2) That the plaintiff and his Atobra family shall recover and take full possession of their lands.
- (3) That the defendant herein his heirs, assigns, workmen, and all those claiming through him are restrained forthwith from entering or interfering with the said land.
- (4) No order has been made for general damages as that has not been established
- (5) Cost of GH¢1,000.00 for the plaintiff and against the defendant.

.....**SGD**.....

ISSAH ABDUL-WAHAB

(MAGISTRATE)