

IN THE DISTRICT COURT HELD AT AKIM OFOASE ON THURSDAY 22ND JUNE,
2023 BEFORE H/W KEN. OKYERE-ABOAGYE AS MAGISTRATE.

SUIT No: ER/AF/DC/A6/2/2023

REBECCA GYEKEYEWA

v.

YAW MARK DOKU

JUDGMENT

On the 5th of September, 2022 Applicant commenced this action against Respondent the following reliefs:

1. Applicant sues Respondent for an order of the Court for Respondent to pay GHc200 as monthly maintenance for the upkeep of their two issues namely Kwadwo Amoako; 6 years and Akwasi Doku; 4 years which Respondent had left with Applicant without any care.
2. An order of the Court for Respondent to compensate Applicant with GHc20,000 for renouncing their marriage after 23 years that parties had been together and has 8 issues.
3. An order of the Court for the settlement of 3 plots of land measuring 300" x 300" with 3 bedrooms thereon located at Akim Bontodiase which parties acquired together during their cohabitation period for each party to manage his/her own.
4. An order of the Court for Respondent to have access to 6 of their issues who are living with Respondent and for Respondent to also have access to their 2 issues living with Applicant in the same town.
5. An order of the Court for Respondent to desist from intimidating her and driving away men who show interest to marry her after their marriage had fallen on rocks.
6. Costs.

Respondent pleaded not liable to claims 1, 2, 3 and liable to claims 4, 5 and 6 respectively.

The summary of the subject matter of claim are that:

1. Applicant and Respondent are farmers and both residents of Akim Bontodiase.
2. Applicant says she got married to Respondent and cohabited for 23 years and have 8 issues together.

3. Applicant says that Respondent renounced their marriage before their respective family members about three (3) years ago and 2.5-acres of cocoa farm was given to Applicant out of their 7-acre cocoa farm that they cultivated.
4. Applicant says she was giving one bedroom out of the three (3) bedrooms they built at Akim Bontodiase on 300" x 300" plot of land which Applicant refused to accept because nothing was said about the adjoining plots of land.
5. Applicant says she has been living with their two (2) children but Respondent has been disturbing her from having relationship with anyone who shows interest to marry her.
6. Applicant says when Respondent renounced their marriage, no compensation was awarded her so she prays the Court for redress.
7. Wherefore Applicant sues Respondent as per the reliefs sought and endorsed on her writ of summons.

It must be emphasized that all the reliefs of Applicant had been dealt with except the third relief, so this judgment is seeking to address the adjoining piece of land in front of the 3 bedrooms of the parties at Bontodiase.

The evidence-in-chief of Applicant, Rebecca Gyekyewaa a farmer resident at Akim Bontodiase had it that she knows Respondent as her ex-husband. Applicant continued that she used to live with Respondent as her husband and that they went to Respondent's family house and one Maame Abena Mansa granted them a piece of land around 2005 where they cultivated food crops for about a year. Applicant averred that she went to Bontodiase town one day and noted that the Committee members were demarcating plots of land. According to Applicant she heard the members' plan to demarcate Respondent's grandmother's land to be sold. When she came home, she told Respondent that the land they were cultivating was to be demarcated into plots and sold by the Committee members. Applicant averred further that Respondent then followed up where it was confirmed so Respondent came home with them where they bought three (3) plots at GHc2 a plot; however, the Committee members gave parties an additional plot because the said piece of land is Respondent's family land. Applicant further averred that they constructed a kitchen on the land where they used to cook and eat their dinner from, then they would go home to sleep. According to Applicant, when they made money, they put up two (2) bedrooms with bricks, then she helped with sand and water where they later built one bedroom with blocks. They stayed there until Respondent decided he would not marry her anymore, so after deliberation with the elders, Respondent gave her one of the rooms made from bricks. According to Applicant, the remaining piece of land around the three (3) bedrooms is about three (3) plots and she is praying the Court for redress

and last but not least, Respondent had threatened to eject Applicant from the room she is occupying so he should give reasons to the Court and with this, Applicant closed her case.

The evidence of Respondent, Mark Yaw Doku a farmer resident at Akim Bontodiase had it that he knows Applicant as his ex-wife. According to Respondent, the disputed piece of land is for the Aduana family and that his grandma Abena Mansa, Abena Manu and also Akua Nyamekye cultivated the land previously. According to Respondent, the family had one other plot at Bontodiase which the town took over and built a Methodist Primary "B" School, where they were promised that should they buy any other plot in the town, they would give the family three (3) extra plots, however, the disputed land is 1.5-acres was given to him by his grandma Abena Mansa to prevent the town from coming for it. Respondent averred that they have three (3) bedrooms on the land which they went unto in 2003. Respondent averred further that, his half-sibling Yaw Frank has also built one bedroom and a kitchen at the other end of the land. Then in 2019, his relationship with Applicant collapsed beyond reconciliation where he gave one room to Applicant and he kept two rooms. At the meeting were Ofori Bosomburu, Opanin Kwadwo Antwi, Opanin Kofi Obeng, Opanin Yaw Manu, Frank Yaw Sarpong, Prince Appiah, Akwasi Daniel, Opanin Yeboah Asiamah and Opanin Kwabena Amoah. It was decided that should Applicant herein get married to someone else, then she should vacate the room, otherwise then she could stay.

The evidence of DW1, Yaw Sarpong a farmer resident at Bontodiase had it that he knows Applicant as his sister-in-law and also knows Respondent as his sibling. According to DW1, his family had a piece of land at a place commonly known and called "Ohiasheda" on Akim Bontodiase stool lands of size 1.5-acres. The said land belonged to our grandma Maame Abena Mansa. Development of the town caught up with the land where the town used their land to build a School without the consent of the family. DW1 averred that his mother Aduna and Respondent went to see the Committee members where they promised to give them another land somewhere else or should any of their family lands catch up with development again, the Committee wouldn't take any share out of it. So when their land of size 1.5-acres at Kromo caught up with development, Respondent prayed their grandma to allow him build on it to protect it where she obliged. Respondent initially built a kitchen thereon which is about 13-15 years old and later Respondent built three (3) bedrooms thereon. DW1 averred further that, in 2016 he asked for a piece of land where Respondent consulted Maame Abena Mansa who obliged, so he has built one bedroom and a kitchen on one (1)-acre of the same land given him by Respondent. DW1 claimed that ideally, what is left is about one to two plots (80" x 100").

The evidence of DW2, Prince Amoah Debrah a farmer resident at Akokoaso had it that he knows Applicant as an ex-wife to his nephew and also knows Respondent as his nephew. According to DW2, the disputed land is a family land which his mother Abena Mensah gave him to cultivate food crops in 1980 and he happen to travel after. When he returned, his mother disclosed to him that the disputed land had caught up with development so she had given to Respondent to occupy because the elders of the town had used their other land to build a school. Later one Yaw Korang also joined Respondent on the same land. The disputed land is of size five (5)-plots at Kromo on Bontodiase stool lands and that he doesn't know how come Applicant said Committee member sold the said land to Respondent and with this Respondent closed his case.

The issue before the Court for determination is whether or not Applicant is entitled to her relief:

As per **sections 10(1) and (2) and 11(1) and (4) of the Evidence Act 1975, (NRCD 323)** the law is settled that the party who bears the burden of proof must produce the required evidence of the fact in issue that has the quality or credibility for his claim to succeed. In the case of **Ackah v. Pergah Transport Limited & others [2010] SCGLR 728**, it was held that "it is a basic principle of law of 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 or 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.

Now Applicant herein claims that parties paid for three (3) plots of land and they were given an extra plot because the disputed land is the family land of Respondent, which sum was GHc2 a plot. Applicant was unable to produce a vital witness to support her claim in such a crucial issue. She was also unable to produce any receipt to draw the attention of the Court that indeed the disputed land was sold by the Committee members to Respondent.

Respondent on his part said that the disputed land is 1.5-acres and that he never paid for it, but it belonged to his grandmother Abena Mansa who gave it to him to occupy it so that the elders of the town do not take over. This evidence had been corroborated by his witnesses even though DW1, Yaw Sarpong mentioned that Respondent had given him an acre out of it, on which he had built a bedroom and a kitchen and what is left is about two (2) plots.

This Court had taken judicial notice of the fact that, when a piece of land is caught up with development in this jurisdiction, the elders of the town or Committee members are always interested in what goes in for the development of the town and not demarcating the entire land into plots for sale, since that is the sole prerogative of the family whose land it is. On that note, the Applicant is unable to prove to the Court beyond reasonable doubt that the family land of Respondent was sold to Respondent by the said Committee members when the family land was caught up with development.

Now Applicant had been given a single room by Respondent to live in and this room she shares with two of their issues, however, Applicant cannot be boxed in that single room with their issues, so Applicant is allowed to utilize the land in front of her room temporarily in any lawful manner, but she cannot do anything permanently on the land.

It must also be emphasized that Respondent cannot seek to evict Applicant from the said single room should Applicant get married to another man whatsoever.

H/W Ken. Okyere-Aboagye

(District Magistrate).