

**IN THE DISTRICT COURT, WULENSI HELD ON 28TH JUNE
2023 BEFORE HIS WORSHIP BITAM LARI, ESQ.**

Suit No NR/WUL/DC/A1/6/2023

ABDULAI MOHAMMEDPlaintiff.

VRS

BALIMOR AGYAM..... Defendant.

JUDMENT

The plaintiff sued for declaration of title and ownership of all that parcel of land lying and situated on the western part of Kpanyasi between Gbungbaliga and Kpayansi and surrounded by the shrine called Chenye, recovery of possession, damages for trespass and perpetual injunction against the defendant. The defendant pleaded not liable to all reliefs sought by plaintiff.

In his summary of evidence filed on 7th November 2022, plaintiff traced ownership of the land in Kpayansi within which the disputed land lies to his family through their great grandfather Bakinaabe Limpu Damako and the defendant as a settler who got a grant of a part of this land from one of their family head called Limpu Damko Abdulai, who after consulting his family members gave out the land to him with a condition that if anyone of them wanted the land to farm on, defendant will return it to the grantor. He said the land given to defendant was a portion of what plaintiff's deceased family member, Limpu Damko Issahaku was farming on who died in 2012. Plaintiff concluded his statement of claim saying it was defendant's refusal to give

back this land to his family upon negotiated demands that compelled him to take this court action.

In paragraph 13 of his witness statement filed on 12th December 2022, plaintiff said it was defendant's father, Balimor, who got the land from his (plaintiff's) grandfather called Bakinaane Limpo Damako after consultation with his family members. He says after this grant, defendant's father and plaintiff's family members became adjoining farm owners and it was so until defendant's father passed on and defendant and his siblings have continued cultivation of the land; paragraph 18 refereed.

Then in paragraph 20 of his witness statement, plaintiff said his father granted defendant a portion of their late family member, Limpo Issahaku's land to defendant. He said this year (2022) when he came of age and needed land to make his own farm, he approached his father and the latter called the defendant and told him to release the late Issahaku's land to plaintiff but defendant refused, leading to this court action.

From the plaintiff's summary of claim and witness statement, there is consistency save that in the former, he said defendant was given late Issahaku's land with a condition that he will have to release it when it was needed by his grantor. In his witness statement this portion was not repeated. So, the plaintiff's claim appears to be for only late Issahaku's portion given to defendant in or about 2012.

The first witness for the plaintiff, Dawuni Haruna Damakon, who is by far older than the plaintiff, gave a more detailed account of the history of the land in Kpayansi. He said their great grandfathers were first settlers but the 1981 ethnic conflict made them relocate for safety but returned three years later and it was Bakanaane Limpo Damakon who was first to resettle and continue farming there and that it was at this point in time that the defendant's family came and got a grant of the land from the said Bakanaane Limpo Damakon. This witness said when Issahaku Damakon died, his children continued farming on his land as adjoining land owners with defendant's father. According to this witness, when Haruna Damakon's children came of age and

needed more land, the plaintiff approached him for land but he referred plaintiff to see his own father Limpo Abdulai who in turn instructed plaintiff to go and spray the disputed land and farm thereon. Plaintiff's attempt to do as instructed met defendant's resistance, leading ultimately to this action.

DEFENCE

According to the defendant, he grew up and met his father and his siblings farming on the disputed land when he came of age, he and his siblings joined in farming on same land with their father till he died in 2011. Defendant says plaintiff's family shrine is on a portion of the land and the latter's family has been performing annual rituals at the shrine. Defendant said his father has been giving out sacrificial animals and drinks to plaintiff's family for the annual rituals and after his father's death, he, defendant, has also continued to do same. Plaintiff admitted this in cross examination. According to him, occasionally, plaintiff's family members make requests for portions of the land in defendant's family possession and they have not denied them. He said at one time the chief of Kpayansi called and told him to share the land with Mukaila but when he did, the latter did not cultivate the portion given him.

According to the defendant, plaintiff is up to reclaim the land from him because he (plaintiff) does not understand why they should be making requests for land from people his family granted same land to.

Witness for the defendant, Youben Tikaye who is also head of latter's family recounted same story of having gotten the land from the plaintiff's family for which they gave presents to the chief of Gbungbaliga for the grant.

The second defence witness, Balimor Joseph, said the plaintiff is not interested in farming on the disputed land but his real motive is to reclaim the land from their family since they (defendants) do not have land in Nanumba South.

FACTS ESTABLISHED

From the evidence adduced in trial the facts that stand out clearly are that the plaintiff is a member of the Wumbee Bakinaane family of Kpayansi, the usufructuary title holders of Kpayansi lands who settled the defendant's father on a portion of their family land at Kpayansi by granting a portion of the land to the defendant's father after which defendant's father gave customary drinks in appreciation and subsequently gave an annual contribution of animals and drinks for the performance of customary rituals at the family shrine of the plaintiff. Defendant and his siblings have continued cultivation of the land granted to their father and defendant has continued showing allegiance to the grantors of the land, i.e. plaintiff's family.

The plaintiff is now an adult and stands in need of land and wants to take the land back but the defendant is resisting this as owners of the land which his father had before his demise.

The facts of this case are not complicated at all. There is no dispute as to who owns the land. The parties are ad idem on who the gave or received land from whom. The plaintiff's grandfather gave the land in dispute to the defendant's father. Throughout cross examination of the defendant, it stands out that he is aware the owners of the land is plaintiff's family. He stated clearly even in his witness statement that his family does not own any land in Nanumba North. What the parties are actually disputing is the interest or nature of interest the defendant has in the land in dispute and the exercise of rights under that interest.

ISSUES FOR DETERMINATION

The issues that arise for determination therefore are

1. Whether plaintiff is claiming defendant's farmland granted by plaintiff's family or a portion of late Limpo Damko Issahaku's farmland given to defendant.
2. Whether or not defendant has any interest in his father's farmland

3. Whether or not the plaintiff can terminate the defendant's interest in defendant's family farmland, if any

Issue 1

At paragraph 6 of plaintiff's summary of evidence he set up a story that a late head of family called Limpu Damko Issahaku died and the next head of family, Limpu Damko Abdulai, granted part of late Issahaku's farm land to defendant with a condition that when they needed it, they will take it back and defendant had accepted that condition but "... last year, we the children of Limpu Damko Abdulai told our father that we wanted the land to farm and my father called him and he refused to come." Plaintiff maintained this story in his witness statement to the effect that the land in dispute is the former farmland of Limpu Damko Issahaku and not the land granted to defendant's father before Issahaku's death.

However, paragraphs 9 – 13 of plaintiff's first witness' statement is revealing. It sets up a story that is quite different from that of the plaintiff. According to this witness, the land in dispute is that land that was granted to defendant's father by Bakinaane Limpo Damako. He makes it clear that when the head of family Bakinaane Limpo died, his children remained farming on his land, sharing boundary with defendant's father. He did not make any reference to Limpo Damko Issahaku dying and his land given to the defendant with a condition to return it when asked to.

For this witness (Dawuni Haruna Damakon), the reason this matter came to court is because at the time of granting the land to defendant's father, plaintiff's family was small and most of the children were in school but now they have come of age. He said when plaintiff came to him and asked him for land to farm, he (witness) told plaintiff to go to his own father, Limpo Abdulai and when he did, the latter asked him to "go and spray the land in dispute". When paragraphs 11 and 16 are read together, the only meaning one gets is that the land in dispute is the land that was given to defendant's

father by Bakinaane Limpo Damakon because plaintiff's father had instructed him to go and spray a part of it and make his own farm.

From the evidence of plaintiff's witness, at the time of coming to court, his father was alive. Plaintiff did not call his father whose order or direction led to this dispute. His sole witness also did not collaborate the averments of plaintiff.

At page 4 of volume 2 in the record of proceedings, plaintiff in cross examining the defendant expressed worry why his family should give defendant's **family** a piece of land for farming and now they were claiming ownership over it. He added at page 4 that, "So now I put it to you that we need the land back." It is clear from the evidence that plaintiff wants the land given to defendant's family, and not the portion he claimed was part of Limpo Issahaku's farmland.

Again, the description of the land plaintiff wants title to be declared in his favour does not mention Limpo Damko Issahaku. It rather describes all of what defendant's family has in the Chenye shrine area between Gbungbaliga and Kpayansi. Certainly, the portion Limpo Damko Issahaku farmed did not encompass all of this area described in relief 1 of plaintiff's claim.

Issue 2

What happened between the plaintiff's head of family and defendant's father years ago is what is known as customary grant of land. This grant of land creates an interest in the grantee and that interest is protected by the Land Act, 2020, Act 1036. The defendant's father approached the plaintiff's head of family, Limpo Damko Abdulai and made a request for land. There is evidence on record from both parties that the plaintiff's head of family took time and consulted other members of the family who matter before a decision was arrived at and the land granted to the defendant's father. The grantee gave thanks and appreciation in line with custom. The plaintiff did not

give any evidence of conditions given to defendant's father for a return of the land as and when they needed it.

Perhaps what makes the plaintiff very apprehensive is the claim of the defendant that the land in dispute is not for the plaintiff's family but for his family. It may sound contradictory on the part of the defendant to admit in his defence that his father got a grant of the land from plaintiff's family and then go on to claim ownership. What the two parties, especially the plaintiff does not know is that the term "owner" has a loose meaning in law. The legal term "interest" captures the true meaning of the term "owner". Section 1 of the Land Act, 2020, Act 1036 identifies six types of interests in land. Those that are of interest and applicable in this case are the allodial title and usufructuary interest.

The allodial title is the highest title in land in Ghana and may be held by the State, the skin, the stool, the clan, the family or an individual. The defendant admits his family has no land in Nanumba South so he is not contesting the allodial title. The plaintiff's family is part of the Nanung tribe which has the allodial title and this is evident from the evidence on record.

From the evidence, both plaintiff's family and defendant's family are usufructuary interest holders. Section 5 (1) of Act 1036 spells out how the usufruct is acquired. A subject to a skin, or a member of the skin, or a family or a clan which holds the allodial title has an inherent right to exercise usufructuary rights over land in its possession. The plaintiff's family falls squarely in this category.

The same section 5 (1) continues to list a person who has been expressly granted land or who has settled on the land for a period of not less than fifty years as also acquiring the usufruct. Section 5 (c) states that the usufruct is inheritable and alienable.

From the evidence, the defendant and his family are not members of the skin or clan or family of the plaintiff's tribe, the Nanumbas. However, where person settles at a place with the permission of the allodial title holder for a period of not less than fifty

years without any conditions attached and agreed on, that settler acquires the usufruct and has an interest in land under his possession.

From the evidence, the defendant has said, and the plaintiff collaborated, that his father was the one given express grant of the land by the plaintiff's family. As usufructuary interest holders of land belonging to their clan, the law allows the Bakinaane family to which the plaintiff belongs, to both inherit as well as alienate to other persons who are settlers. By this alienation, the defendant's father had also acquired the usufructuary right which is a possessory right and could also alienate same, with approval by the grantor family. The law says it is also inheritable. This means that after the death of the defendant's father, the interest he had in the land does not expire or revert to the grantor family but it is inherited by his children, the defendant being one.

It is this interest the defendant is protecting when he says the land is for his family. That interest is limited to what was granted to his father and nothing more. The interest does not expire unless the family ceases to exist or they abandon it. Periodic fallowing for the land to regenerate itself does not pass for abandonment.

Issue 3

On the third issue as to whether the plaintiff can terminate the defendant's interest in the land granted to defendant's father, if any, the law is clear. In **ATTA PANYIN AND ANOTHER VRS. ASANI II [1961] GLR 305**, the High Court held that, "an allodial owner cannot interfere with the enjoyment of usufructuary rights". Title to the land is not in contention. It is in the plaintiff's family and the defendant has acknowledged it throughout his defence. However, the plaintiff's father had conferred possessory right which is the usufruct in the defendant's father and since that right is hereditary, it has passed on to his children one being the defendant and cannot be interfered with as long as the defendant acknowledges the title of the owner. That interference is not

limited to forcefully sharing in the cultivation of the land but includes taking back the land.

Any directions by any person from the plaintiff's family for the defendant to give or allow members of their family to share in the use of the land amounts to an interference if the defendant's family does not agree.

Save that title in the disputed land remains in the plaintiff's family, the latter fails in his other reliefs. As such, plaintiff cannot recover possession of the land granted to the defendant's father by Bakinaane Limpo Damakon for the reasons stated supra. Also, plaintiff fails to get any damages as the defendant is not a trespasser. He inherited the usufructuary interest granted to his father. Lastly an injunction will not lie to restrain defendant and his family from cultivating the land granted to his father.

Conclusion.

In the three issues set up for determination, the plaintiff lost in all. He wanted a declaration of title to land that encompasses the portion granted to defendant's father so that should he win, the defendant will have lost the usufruct. Throughout his cross examination of defendant and his witnesses, his focus was on that land. In his summary of claim and his evidence in chief however, Plaintiff set up an entirely different claim of defendant trespassing onto an old farmland of a late family head of plaintiff's. In cross examination, plaintiff failed to ask a single question on the trespass to late Issahaku's land.

Secondly plaintiff failed to appreciate that land has a bundle of interests to the extent that one could have title to land but out of that title, various interests can be created and these interests are recognized in law and protected.

Thirdly, a person who has been validly granted land and acquires the usufructuary interest is protected under the Land Act, 2010, Act 1036 so long as he acknowledges

the title of his grantor. Defendant has not claimed his father acquired the land by himself neither has he claimed by himself to have title to Kpayansi land.

I decline to award any costs against the plaintiff in favour of the defendant. This is because they remain adjoining land owners and being neighbours, the rapport between them will better be maintained if costs is not inflicted on the plaintiff. Let each party bear his costs.

.....sgd.....

Magistrate