

**IN THE DISTRICT COURT HELD AT WULENSI ON 27<sup>TH</sup> JULY 2023 BEFORE  
HIS WORSHIP BITAM LARI**

Suit No NR/WUL/A1/2022

**SALI AGBALAGBA V ASUMAH SUALEH**

**JUDGMENT**

The plaintiff sued for declaration of title to a ten-room compound house situated at Katejeli and bounded to the north by the houses of Agbalagba, Brokum to the south, Alhaji Gbader to the east and the east by the ECG Church. The only ancillary relief is for any other relief the court deems fit.

The plaintiff is a Nigerian and the defendant a Ghanaian. The owner of the house is one Pastor Matthew Adetoro, also a Nigerian and a direct uncle to the plaintiff. According to the plaintiff, her late father was the elder brother of Matthew and both built their houses side by side. The plaintiff's father was a business man and his younger brother who was the owner of the house in dispute, a pastor. According to the plaintiff, the house was built in the 1950s. It is a mud structure reinforced with cement plastering.

According to the plaintiff, her uncle, Pastor Matthew Adetoro returned to their country Nigeria with his wife and children because of the Aliens Compliance Order of 1969, leaving the house in dispute to his elder brother who was plaintiff's father and never returned till he died. Plaintiff's father rented the rooms in the disputed house to tenants and accommodated the defendant in one of the rooms for free because of the immense help the latter gave to the former in his business. Defendant has continued to occupy the room after the latter's death. The plaintiff is the sole surviving child of her father living in Ghana while Pastor Matthew Adetoro has neither a wife nor a child or direct family member living in Ghana. The defendant has not denied the house is for plaintiff's uncle. He has not denied it was plaintiff's father

who accommodated him for free in Pastor Matthew's house. In fact, he admits all the averments of the plaintiff as to the history and ownership of the house.

The claim of the defendant is however that the house in dispute was gifted to him by plaintiff's father for the immense help he gave him and also in satisfaction of a failed promise to send him to Mecca on pilgrimage. After assuming ownership of the house, defendant said he made a teacher his caretaker and left for Nigeria with plaintiff's father. Defendant said his caretaker later wrote and informed him the house was partially broken down and so he came back home in Ghana and renovated it but now the entire house needs renovation and it was in his bid to do same that the plaintiff took this action. The defendant then counterclaimed for GHC6,000 for the maintenance works done on the house. His son filed an unsworn statement in support of this claim. According to this unsworn statement, defendant travelled to Nigeria and left the house under the care of an appointed caretaker who often received moneys from defendant from Nigeria for any renovation that was due.

The counterclaim was determined and found out to be unmeritorious. Defendant's expenses were nothing more than ordinary routine maintenance needed to be done by whoever is in charge. The plaintiff/respondent made it clear in her defence to the counterclaim that defendant/counterclaimant rented out the house and never accounted to anyone but spent all the moneys accruing from the rent.

On the substantive claim by the plaintiff, the defendant lives under the belief that he owns the house in dispute by way of gift and was about to break down the switch building and put up one of his choice when the plaintiff took this action.

The two parties were given the opportunity to make their respective cases. The defendant, even before his counter claim was dismissed opted to abandon the case. Being a suit involving land, the plaintiff ought to make her case for court to take full evidence to determine the matter on the merit through the strength of plaintiff's case and not the weakness or absence of the defendant's case.

The plaintiff and her two witnesses testified on oath and tendered their witness statements. In the evidence of the plaintiff and her two witnesses, the fact established is that the house in dispute is the property of plaintiff's paternal uncle, pastor Matthew. From the witness statement of the defendant, the house is for the plaintiff's father. After testifying, I am convinced that the plaintiff was the one telling the truth of ownership of the house. her evidence was corroborated by her two witnesses.

The defendant attempted to put ownership of the house in the plaintiff's father so as to tie in his claim of a gift of that house to him but has abandon the whole suit.

The issues that arise for determination are

1. whether or not the plaintiff has capacity to sue for declaration of title to the house
2. whether or not the house in dispute was gifted to the defendant

The plaintiff is the direct niece of the owner of the house, pastor Matthen Adetoro. As a niece, she is a family member of the said owner. Her interest in the house would have stood remote if the owner had any of his biological children or claimants to the house. there being no such living offspring of pastor Matthew Adetoro in Ghana, the plaintiff as the only surviving member of the family has her interest in the house activated by the fact of no descendant of pastor Matthew within the jurisdiction. Pastor Matthew is deceased. He has no direct family member but the plaintiff is a niece. In *OKYERE (Deceased) v Appenteng and Adoma* (2012)SCGLR 65, Brobbey JSC stated that where a party has no capacity to sue but has an expectant interest to protect, any member of the deceased's family who died intestate or beneficiary of such estate will qualify to mount such an action to protect that expectant interest. I am bound by this decision and hold accordingly that the plaintiff has capacity to mount this action.

On the second issue of whether or not the house was gifted to the defendant it is worthy of note that the defendant who made this claim as a form of defence did not complete the trial. He abandoned the case after filing his witness statement. In the said

witness statement, he claimed the house was for plaintiff's father. However, plaintiff and her witnesses all stated clearly that it was for her uncle but was given to plaintiff's father when the owner, Pastor Matthew was leaving for Nigeria. Witnesses for plaintiff, Nana Kwasi Kumah and Joseph Kojo Nyame both recounted their personal knowledge of the plaintiff's family and how pastor Matthew built the house.

The evidence was that the plaintiff's father was a caretaker of the house in dispute. Being a caretaker, he did not have the capacity to sell it to the defendant. It appeared clearly that the defendant imputed ownership of the house to plaintiff's father so that it will appear regular and the gift would stand. Be that as it may, defendant did not disclose how this house was gifted to him. The casual claim made by defendant who abandoned the case has no scintilla of evidence of that claim.

I therefore hold that the plaintiff's father never gifted his brother Pastor Matthew's house to defendant and so defendant has no interest to protect in this suit. The plaintiff's interest in the property is intact, in the absence of a child of pastor Matthew Adetoro in the jurisdiction.

The defendant has been in control of the house for decades and mischievously and surreptitiously tried to metamorphosed from a caretaker to an owner, hoping no one would raise a finger of protest. Such a character should not be allowed to come near the property. He is accordingly ordered to vacate the chamber and hall he is occupying in the house within three months after delivery of this judgment.

This case has lasted one year, having been called the first time on 12<sup>th</sup> July 2022. Plaintiff called two witnesses and so I have assessed costs at GHC1,200 for the plaintiff against the defendant.

Any tenant or occupier of any room in the house must atone tenancy to the plaintiff, Sali Agbalagba and she has the right to decide who lives in the house.

Plaintiff is therefore given right for recovery of possession.

.....Sgd.....

H/W Bitam Lari, Esq.