IN THE DISTRICT COURT 2, TAMALE

HELD ON THURSDAY 5TH JANUARY, 2023

BEFORE HIS WORSHIP D. ANNAN ESQ.

SUIT NO. A1/19/12

BETWEEN

ABDUL-AZIZ MUMEEN - PLAINTIFF

AND

1. **ABASS SAMED**
2. **MOHAMED WUMBEI - DEFENDANTS**
3. **AWAL SAMED**

JUDGMENT

INTRODUCTION

1. This judgment relates to land. This judgment should have come way earlier. In fact, it has been over a decade in waiting. The plaintiff after almost 10years in attempt to settle this matter has now revived this action.

2. This case started on 23rd March, 2012 when the plaintiff took out a writ of summons against defendants, jointly and severally, for the following:

"a. A declaration that plaintiff is the lawful owner of plot nos. 62 and 63 Tuunaayili Residential Area Block A, Tamale.

b. An order of mandatory injunction directing the defendants to remove any illegal material deposited or any structure erected on the said plot nos. 62 and 63, Tuunaayili Residential Area Block A, Tamale.

c. An order of perpetual injunction restraining the defendants, his agents, servants, workmen and any other person claiming under them from interfering in whatsoever from plaintiff's plots.

c. General damages for trespass."

3. On 5th April, 2012 the defendants pleaded not liable to plaintiff's claim. Thereafter, parties stipulated to settle. However, attempts at settling have taken all these years, until 26th May, 2022 when plaintiff informed the court that settlement had broken down and he intends to proceed.

4. I must say that settlement does not have to take that long. At best, 30days from the date parties intend to settle and 30days extra where parties indicate to the court that they are almost at settling, with limits set by the court. See Or. 25 of CI 59 (as amended).

PLAINTIFF'S CASE

5. The plaintiff's case is contained in his statement of claim and witness statement as well as exhibits so tendered. According to the plaintiff, between 1995 and 1996, he expressed interest in buying plots at Kanvilli Tuunayilli, Tamale which were going for GHS12.00 per plot. He paid GHS24.00 to Tuu-Naa Issah Abdulai and allocation papers for plots no. 62 and 63 were issued, dated 18th April, 1996. Later, he applied to the Lands Commission for a 99year lease. He indicated that he had been in a peaceful possession of the said land, until he noticed a structure on plot no. 62 and

teak trees on plot no. 63. His checks indicated that the defendants were those putting up the structure on plot 62, so he informed Naa-Dua, an opinion leader within the area, to call the defendants to order. This, however, yielded no positive outcome. The matter then went to the Regent of Kanvilli, then to Regent of Gulkpegu and to the Kampakuya-Naa, yet the matter remained unresolved. Hence, plaintiff's intend to proceed to the court for a determination as per the aforementioned reliefs.

6. Plaintiff did not call any witness, but tendered in evidence the following exhibits:
    i. Exhibit A – Allocation letter for plot no. 62 dated 18/01/96
    ii. Exhibit B – Allocation letter for plot no. 63 dated 18/01/96
    iii. Exhibit C – Site plan for plot no. 62
    iv. Exhibit D – Site plan for plot no. 63
    v. Exhibit E – Lease document regarding plot 62 dated 18/04/96
    vi. Exhibit F – Lease document regarding plot 63 dated 18/04/96
    vii. Exhibit G – Photo of building on the disputed land.
    viii. Exhibit H – Search Report on plots no. 62 and 63 dated 29/07/22 with accompanying receipts.

DEFENDANT'S CASE

7. The 1st defendant testified on behalf of 2nd and 3rd defendants. According to him, plot no. 62 belongs to their late father, Abdul Samed Ibrahim. He stated that sometime in 1992, their father moved from Yendi to settle at Kanvilli Tuunayilli, a suburb of Tamale. He narrated that after going through the necessary customary rites, the said land was *'marked out'* by the Dohi-Naa, Yahaya to their father with the concurrence of Tuu-Naa Saaka. He added that at the time of the allocation, the said land was unnumbered and uninhabited. He stated further that their father then put up a mud house on the said land, but it collapsed, so a block house was subsequently erected.

Defendants averred that when the block house was been constructed, they took refuge in a neighbour's house, one Mr. Mohammed Sigli. 1st defendant testified that when the area was subsequently demarcated, the said land was allocated as plot no. 62 to their father. Here again, their father presented kola to Tuu-Naa Saaka on the advice of Dohi-Naa Yahaya.

8. 1st defendant contends further that when this matter went before the Kampakuya-Naa, he was unable to tender the allocation paper of plot no. 62 because their father did not hand it over before his death. He maintained that when his father put up the structure for the first and second time, plaintiff never raised any challenge. He stressed that the Kampakuya-Naa settled the matter by giving plot no. 62 to their father whiles plot no. 63 was given to the plaintiff and thereafter the parties therein were referred to the Regent of Kanvilli, Alhassan Yakubu (DW2). He concluded that plaintiff accepted the settlement but complained to the Regent of Kanvilli (who is presently the Saatingli-Naa) about the teak trees on plot no. 63. So the Saatingli-Naa at his own expense removed the teak trees to which plaintiff has now put up a structure. Although, defendants did not file a counterclaim qua counterclaim, in their evidence they sought to claim that plot no. 62 had been validly allocated to their father.

9. The defendants, however, in their evidence failed to tender the picture of plaintiff's structure although same was mentioned at paragraph 28 of the witness statement.

DEFENDANT'S WITNESSES

10. The defendants called three witnesses who gave evidence regarding the customary grant and prior occupation of defendant's father on plot no. 62.

11. The Dohi-Naa Dauda Yakubu (DW1), in his evidence in support of defendants' case stated that defendants' father came unto the land before plaintiff laid his claim. He indicated that the land in dispute is part of Dohi-Naa's land and that even though the Dohi-Naa gives out land under his control, it was his superior the Tuu-Naa who issues the allocation papers. He contended that defendants' father was given the land by Dohi-Naa at the time that his grandfather was the Tuu-Naa of Kanvilli. He added that he was not at Kumpakuya-Naa's palace when the chief determined the matter, but when the parties reported the settlement to the Regent of Kanvilli, he was present. He thought that with the Regent of Kanvilli uprooting the tree stumps on plot 63, the matter had died peacefully. He indicated that plaintiff, even though agreed to the settlement, complained that defendants had insulted his (plaintiff's) uncle and that defendants had to apologise as part of the settlement. According to DW1, defendants disputed this, but for the sake of peace, defendants agreed and so the Tuu-Naa sent his linguist Tuu-Wulana (DW2), to meet the defendants and their father to approach plaintiff's uncle.

12. DW3, Tuu-Wulana Haruna Alhassan added that when they got to plaintiff's uncle's house, plaintiff informed the uncle that he was not aware of their attendance, so he (DW3) reported back to the Tuu-Naa. Nothing happened thereafter, until he had information that plaintiff had served court processes on the defendants regarding plots 62 and 63.

13. DW2, Saatingli-Naa Alhassan Yakubu testified to the effect that the Kumpakuya-Naa referred the parties herein to him as the then regent of Kanvilli. He stated that the Kumpakuya-Naa had determined that plot no. 62 was to be maintained for defendants since the defendants had built on the land before that the demarcation was done and that he (DW2) was to find a plot for '*someone who had planted teak trees*

on plot no. 63.' He added when the plaintiff complained about the teak trees on plot no. 63, he in fact got some young men to uproot them. After which, he advised the plaintiff to withdraw this case against the defendants, but clearly that was not done. He maintained that plot no. 62 was given to defendants by the proper traditional authority.

ISSUES FOR DETERMINATION

14. The issues borne out by the facts are:

    a. *Whether or not there was a valid customary grant of plot no. 62 to the defendants' father in 1992 prior to plaintiff's grant in 1996?*

    b. W*hether or not the then regent of Kanvilli could grant plot no. 62 to defendants on the basis of prior occupation?*

BURDEN OF PROOF

15. In civil cases, the general rule is that the party who in his pleadings or his writ raises issues essential to the success of his case assumes the onus of proof on the balance of probabilities. See the cases of **Faibi v State Hotels Corporation [1968] GLR 471** and **In re Ashalley Botwe Lands; Adjetey Agbosu & Ors. v. Kotey & Ors. [2003-2004] SCGLR 420.** The Evidence Act, 1975 (NRCD 323) uses the expression 'burden of persuasion' and in section 14 that expression has been defined as relating to, 'each fact the existence or non-existence of which is essential to the claim or defence he is asserting.' See also ss. 11(4) and 12(1) and (2) of NRCD 323.

16. With regards to what is required of the plaintiff in land cases, the law is that the he must succeed on the strength of his own case and not on the weakness of the defendant's case, see **Odametey v Clocuh [1989-90] 1 GLR 14, SC**. In **Kodilinye v**

Odu [1935] 2 WACA 336, the court puts it simply that "in case of doubt, …the party who asserts must lose."

17. Where there is a counterclaim in an action for declaration of title, the Supreme Court speaking through His Lordship Ansah JSC in the case **Osei v Korang [2013] 58 GMJ 1**, stated as follows:

> "… each party bears the onus of proof as to which side has a claim of title against his/her adversary, for a counter claimant is as good as a plaintiff in respect of a property which should he assays to make his/her own."

18. Now, with regard to proof of one's claim or allegation, the Supreme Court in the case **Okudzeto Ablakwa (No. 2) v. Attorney-General & Obetsebi-Lamptey (No. 2) [2012] 2 SCGLR 845 at page 867** held as follows:

> "...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."

19. Finally, let me also rehash what was stated in **Majolagbe v. Larbi [1959] GLR 190** regarding proof of an allegation. The learned judge, Ollenu J. (as he then was) stated at page 192 that, "where a party makes an averment capable of proof in some positive way…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*". See also the case of **Klah v. Phoenix Insurance Company Limited [2012] 2 SCGLR 1139.**

ANALYSIS OF THE ISSUES

20. From the authorities outlining the burden on the parties, the onus on the plaintiff is to lead sufficient evidence in proof that plot no. 62 belongs to him. To state differently, the defendants also has to lead sufficient evidence that they have a valid customary grant and/or had lived on plot no. 62 prior to the grant to the plaintiff.

Issue a

21. The issue for determination, thus, w*hether or there was a valid customary grant of plot no. 62 to the defendants' father in 1992 prior to plaintiff's grant in 1996,* it is settled law that a person claiming title has to prove (i) his root of title, (ii) mode of acquisition, and (iii) various acts of possession over the disputed land, see **Yehans International Ltd. v Martey Tsuru Family & Anor. [2018] DLSC 2488**. Similarly, the claimant must positively describe/identify his land and its boundaries. In **Anane v. Donkor [1965] GLR 188**, the Supreme Court held at holding 1 of the headnotes that, "…a claim for declaration of title or an order for injunction must always fail, if the plaintiff fails to establish positively the identity of the land claimed with the land being the subject-matter of his suit." The Supreme Court, however, in the case of **Nortey v. African Institute of Journalism and Communication [2013-2014] 1 SCGLR 703** held that such a description does not have to be mathematically certain or exact. A similar pronouncement was made by the Supreme Court in **Okine & Another v. Amoah VI [2013-2014] 2 SCGLR 1358** and in addition the Supreme Court further stated that the principle enunciated in **Anane v. Donkor [supra]** should not be slavishly applied.

22. As earlier pointed out in **Osei v Korang (supra),** where there is a counter claimant of the land in dispute, he must also prove that the land belongs to him. In any instance, either party must succeed on the strength of his own case and not on the weakness(es) of the other's case. See also **Odametey v Clocuh (supra).**

23. Where there is a mention of customary grant, the Supreme Court speaking through Dotse JSC in the case **Tetteh & Anor. v Hayford [2012] 1 SCGLR 417** stated the obligation on the grantor as follows:

> "There is an obligation on a grantor, lessor or owner of land to ensure that any grant he purports to convey to any grantee or lessee is guaranteed and that he will stand by to defend the interest so conveyed to any grantee or lessee. This principle was explained by Ollenu J. (as he then was) in the case **Bruce v Quarnor & Ors [1959] GLR 292 at 294** as follows: 'By native custom, grant of land implies an undertaking by the grantor to ensure good title to the grantee. It is therefore the responsibility of the grantor where the title of the grantee to the land is challenged or where the grantee's possession is disturbed to litigate his (the grantor's) title to the land. In other words, to prove that the right, title or interest which he purported to grant was valid."

24. From the above, it therefore suffices that an effective customary conveyance divests the grantor of any further right, title or interest in the land to convey or grant to a subsequent grantee. Hence, the argument holds true that when the grantor lacks capacity, any such conveyance is null and void, thus the principle of *nemo dat quod non habit* as explained by Ansah JSC in the case **Sakodie v FKA Co. Ltd. [2009] SCGLR 64 at 70-78**.

25. From the instant case, plaintiff in evidence claim that he purchased plots no. 62 and 63 on 18th April, 1996 for GHS12.00 per plot. Exhibit A indicates the allocation of plot no. 62 by Tuu-Naa, Issah Abdulai. Subsequently, Exhibit E, the lease agreement for plot no. 62 was executed by the Gulkpe-Naa and Yaa-Naa, for and on behalf of Dagbon Traditional Area. See also Exhibit H being the search report from the Lands Commission confirming the alienation to plaintiff. Exhibit E also indicates the boundaries of plot no. 62. Plaintiff adds that at the time of acquisition, the land was a vacant land, until he noticed a structure on plot no. 62 and teak trees on plot no. 63.

26. With the above established, the defendants to tilt a judgment in their favour had to lead sufficient evidence in support of their case or prove that the said plot no. 62 was rather validly allocated to them.

27. Defendants, on their part, contended that at the time the plaintiff laid claim to the land, their father was already occupying the land. They maintained that the grant to their father was a customary grant, under the Dagbon Custom, sometime in 1992 when the area was not demarcated. Defendants claim that the land was issued by Dohi-Naa Yahaya. Subsequently, when the area was demarcated, the said plot now plot no. 62 was allocated to their father by the Dohi-Naa with the concurrence of the

Kanvilli Tuu-Naa. Defendants indicated that their father performed the necessary customary rites by presenting kola nuts to the Tuu-Naa.

28. This is what ensued when 1st defendant testifying for and on behalf the other defendants had to say under cross-examination regarding the customary grant:

"Q: You know that the Dohi-Naa does not have a right issuing an allocation letter?

A: That is right.

Q: And you also know that the one who has the right to issue the allocation letter is the Tuu-Naa?

A: That is so.

…

Q: Since when was your father given the plots?

A: 1992

Q: From 1992 to 2022, you have never stepped foot at the Lands Commission to register your interest?

A: Yes. When the area was demarcated and pillars were planted, I was not around. When I came I was informed about it and I was asked to come for my allocation document.

Q: You know that at the time you are talking about this land you had no capacity because you were about 6years old?

A: I cannot tell and the pillars were not planted in 1992.

Q: Which year did they plant the pillars?

A: I do not know.

Q: I am putting it to you that there was no document whatsoever given by the chief to your father?

A: They gave my father an allocation letter.

Q: If there was any allocation letter you would have exhibited it for the court, not so?

A: Yes. It is not tendered because they called us, plaintiff and I, to the paramount chief of Dagbon's palace and took our allocation letters. The matter was referred from Yaa-Naa's palace to the Kanvilli chief's palace for the plot no. 63 to be given to the plaintiff and plot no. 62 to me."

29. Despite admitting that the Dohi-Naa Yahaya could not issue allocation letters regarding lands within Kanvilli, defendants indicated that the grant was done with the concurrence of the Tuu-Naa of Kanvilli. However, instead of Tuu-Naa Issah Abdulai, defendants rather referred to Tuu-Naa Saaka. DW1 made reference to Tuu-Naa Abdulai Issah (being his grandfather) who had the capacity to issue the allocation letter. DW1 per his witness statement at paragraphs 5, 6, 7 and 8 admitted that the land in dispute was given by Dohi-Naa at the time that his grandfather was the

Kanvilli Tuu-Naa. DW1 further indicated that his grandfather and Alhassan Baako (secretary to the Tuu-Naa) had a record book for plots so granted. Yet, he failed to tender it. DW3 also admitted that the Dohi-Naa cannot issue an allocation letter, save the Tuu-Naa. Lastly, nothing was said in corroboration of the thanksgiving by defendants' father to the said Tuu-Naa Saaka. In fact, I have been wondering who this Tuu-Naa Saaka is?

30. From the above, the only evidence that could defeat the plaintiff's claim was for the defendants to lead sufficient evidence that they have a valid customary grant in 1992 before that of plaintiff's in 1996. However, they failed to do so and as such must lose on that allegation. In fact, I prefer the plaintiff's version since that is in line with the decision in **Yehans International Ltd. v Martey Tsuru Family & Anor. (supra).** Thus, in my opinion, plaintiff was able to lead evidence that the Tuu-Naa Abdulai Issah was the one who issued the allocation papers to him in 1996 and the subsequent lease agreement by the Gulkpe-Naa and Yaa-Naa, see Exhibits E and H. The inconsistences in defendants' evidence were enormous. For instance, I found that the defendant's father was alive when plaintiff made his claim. Yet, defendants claim their father did not leave behind the said allocation letter. DW1 acknowledged that defendants' father was alive when he stated that the defendants and their father went in attempt to apologise to plaintiff's uncle. Also, 1st defendant could not tell where his father moved from to the said plot. He stated in his with statement that the father moved from Yendi to the Kanvilli in 1992. However, under cross-examination he changed his statement and stated that the father rather moved from Gumani. Lastly, 1st defendant claimed that the Dagbon palace took their allocation paper. I wonder what allocation paper? Was the alleged grant not a customary one? Nonetheless, if there was an allocation letter, who issued it, Tuu-Naa Abdulai Issah or Tuu-Naa Saaka? How about the record book referred by DW1? The said grant would have been recorded by Tuu-Naa Abdulai Issah if indeed same was issued by him, as he did for the plaintiff. Admitting that the Dohi-Naa had no capacity to so grant a land or issue allocation papers, and yet claiming that the land was given by Dohi-Naa indicates that no valid title to plot no. 62 passed to their father, see the case of **Sakodie v FKA Co. Ltd. (supra).** Defendants and his witnesses did not meet the legal obligation espoused in **Tetteh & Anor. v Hayford (supra).** Notwithstanding the above, what is left is the argument by

defendants to the effect that their father had been on the said land without any challenge until plaintiff laid claim to it. This is discussed in the next issue.

Issue b

31. Regarding issue b, thus w*hether or not the regent of Kanvilli could grant plot no. 62 to defendants on the basis of prior occupation*? As earlier determined, the defendants' father was not granted a valid customary conveyance, hence whatever interest they had therein was null and void. The law on prior occupation or possession in land, however, is that it includes the exercise of physical control of the land and the intention by a person to exercise exclusive possession and prevent others from owing the land, see **Binga Dugbartey Sarpor v Ekow Bosomprah [2020] DLSC 9922**. Thus, where the land had previously been granted under a customary law or otherwise, and a subsequent grantee is purportedly made of the same land, the subsequent grantee cannot claim priority over the earlier grantee, or by reason only that he registered his grant first. Notice of prior possession may invalid a subsequent grant, see **Brown v Quarshigah [2003-2004] SCGLR 930, Adormson v Tetteh [2013] 59 GMJ 62, CA** and **Tonado Enteprises v Cho Sen Lin [2007-2008] SCGLR 135.** In **Roland K. Dwamena v Richard N. Otoo [2017] DLCA 5100**, the Court of Appeal puts it simply as, "In any case, the law is that a person in possession has an interest which is valid against the whole world except to a person who can establish a better title."

32. In explaining what constitutes adverse possession due to prior occupation, subsection (1) of section 10 of the Limitation Act, 1972 (NRCD 54) provides that, "A person shall not bring an action to recover a land after the expiration of *twelve years* from the date on which the right of action accrued to the person bringing it or, if it first accrued to a person through whom the first mentioned claims to that person." Adverse possession is defined by **Blacks' Law Dictionary, 9th Edition by Brain A. Garner** as: "The

enjoyment of real property with a claim of right when that enjoyment is *opposed to another person's claim is continuous, exclusive, hostile, open, notorious.*" Hence, the 12years limitation period does not run unless the person against whom a suit is instituted for recovery of land is in adverse possession of same.

33. The Supreme Court in **Amidu & Anor. v Alawiye & Ors. [2019] DLSC 6573** by majority decision held that the defence or claim of adverse possession is not available to squatters and licensees. The court speaking through Pwamang JSC explained who is a squatter, licensee and trespasser with regards to prior occupation/possession as follows:

> "The difference in law between a squatter and a trespasser is that whereas a trespasser enters onto a land and claims an interest in it that is inconsistent with the rights of the true owner, a squatter does not claim any interest in land he is in occupation of. Therefore, possession by a squatter is not adverse to the title of the true owner so a squatter cannot succeed on a defence of limitation…Similarly, possession of land by a licensee is not inconsistent with the right of the true owner, so such a possession is not adverse and cannot ground a defence of limitation."

34. The above principle was also cited by Kulendi JSC in the **Binga Dugbartey Sarpor v Ekow Bosomprah (supra).** See also the cases of **Menuna Amoudy & Ors. v Antwi [2003-2004] SCGLR 967, Armar Nmai Boi & 2 Ors v Adjetey Adjei & 12 Ors. [2010] SCGLR 17** and **Ebenezer Kwaku & Anor. v Mankralo Tetteh Otibu IV [2021] DLSC 10790** on adverse possession.

35. Alternatively, to rely on estoppel by acquiescence in equity, the Supreme Court case of **Ernestina Frimpong v Mr. Biney & Anor. [2016] DLSC 2837,** His Lordship Pwamang JSC delivering the unanimous decision stated that "…a party is required to

satisfy the following conditions; (i) the person who enters another's land must have done so in honest but erroneous belief that he has a right to do so, (ii) he should have spent money developing and improving upon the land, (iii) the entry should have been known to the actual owner who should have fraudulently encouraged his development of the land by remaining silent and not drawing his attention to the error, and (iv) it is otherwise unconscionable to allow the true owner to recover the land. See **Nii Boi v. Adu [1964] GLR 410 SC.**

36. From the evidence, it is unclear whether defendants are claiming to be trespassers. In fact, the defendants laid claim to a customary grant, to which as afore-determined was an invalid grant. If they were indeed on the land prior to plaintiff's acquisition, they were enjoined by law to lead sufficient evidence in proof of same particularly when plaintiff testified under oath that the land was given to him vacant in 1996. Defendants claim they were on the land in 1992. Their father first put up a mud house, but it collapsed. On the second time, a block house was erected. Defendants added that when the block house was being erected, they took refuge at Mr. Mohammed Sigli's house.

37. In law, when such an allegation is denied, the party alleging it must prove it by not 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, see **Majolagbe v. Larbi (supra).** The defendants failed to lead any such evidence as required in the *Majolagbe case*. The mud house, if that was built, did not exist as at 18/01/1996. Nothing was said about when the block structure was built. They also failed to call the said Mr. Mohammed Sigli to give evidence. They rather sought to prove, in vain, their customary grant.

38. Plaintiff, on the other hand, claims that at the time he bought the land the layout/demarcation of the area had been done and plots no. 62 and 63 were vacant. It appears to me that when the plaintiff visited the land sometime after 1996 that he noticed defendants' a structure on the disputed land (i.e. plot no. 62) and teak trees on the plot no. 63. This matter went before the chiefs, but was not resolved. From the evidence, it was in 2008 when the matter had proceeded to the palace of Kanvilli Naa and then to the regent of Kampakuya-Naa. It means that before 2008, the plaintiff had raised the issue of defendants' encroachment through one Naa Dua, the opinion leader. The matter had remained unresolved until 2012 when plaintiff proceeded to court. Again, the matter went back to the chiefs, yet remained unresolved and the plaintiff took steps to proceed with this action on 26/05/22.

39. Hence, defendants stating that being on the said plot without any challenge to their occupation and that the land belongs to them, this will not hold, without any sufficient proof, see **Majolagbe v. Larbi (supra).** Same will not suffice as adverse possession or acquiescence as explained above. See also the cases of **Amidu & Anor. v Alawiye & Ors.** and **Ernestina Frimpong v Mr. Biney & Anor (supra).**

40. DW2, the then regent of Kanvilli (now the Saatingli Naa) contended that the Kumpakuya-Naa had determined the matter to the effect that defendants be allocated plot no. 62 whiles plaintiff be allocated plot no. 63, because defendants have been on the said land prior to demarcation of the area. I find the position of DW2 quite confusing. This is what he stated in 5, 6, 8 and 9 of his witnesses statement:

> "5. I say that listening to both parties, Kampakuya-Naa told them to come to me for settlement.

6. I say that Kampakuya-Naa told me that in the interest of peace I should find a plot for someone who had planted teak trees on plot no. 63.

8. Kampakuya-Naa also said the defendants should maintain plot no. 62 which they built before the layout was drawn.

9. I say that the parties agreed to the settlement except that plaintiff complained of the teak trees."

41. However, during cross-examined, this was what ensued:

Q: And at the palace, you were told that there was a lease agreement on plots no. 62 and 63?

A: I was told that there was a lease but at the Yaa-Naa's palace the lease were taken from the parties by the current regent before they were referred to me. So mine was to make enquires from these parties before taking the next necessary step.

Q: You know that Kanvilli Traditional land is sold and a lease is to be taken, it is the Gulkpe-Naa who signs?

A: That is so.

Q: And when Gulkpe-Naa signs it is the Yaa-Naa or the regent who counter signs?

A: That is so.

…

Q: And when this two important paramount chiefs sign the document, no other person can change it, is that not so?

A: That is so.

Q: So why were you changing the plots when you knew the holder was having a lease over the 2 plots?

A: The reason why I changed is that, it was Dohi-Naa who gave the plots to the 1st defendant's father and Tuu-Naa also gave the same plot to the plaintiff. These sub-chiefs are answerable to me. But then Dohi-Naa is also a sub-chief to Tuu-Naa, so when this matter came up, these two sub-chiefs were not alive and I, as the overall chief to these two chiefs, took over in order to make sure that this problem is resolved. Because the problem of these two chiefs are my problem. So I shared the two plots between the plaintiff and 1st defendant because when a decision is made by a chief no other person can refuse to adhere to that decision, that was why I did not reject Tuu-Naa's and Dohi-Naa's decision.

Q: You can confirm that in the Dagbon custom, a lower chief cannot change the higher of a high chief?

A: Yes."

42. It appears to me, from the evidence, that it is DW2 who is falsely pushing the interest of the defendants. In one breath, he was directed to maintain plot no. 62 for the defendants and in another breath he changed the plots in order to restore peace. Since he intended to restore peace, why not allocate a new plot to the defendants. Rather he took that of the plaintiff and did not even bother to replace it. More so, I do believe that the Kampakuya-Naa's directive that "find a plot for someone who had planted

teak trees on plot no. 63", he (DW2) was to relocate the defendants. I do not think DW2 had such right to so change the decision of his superior chiefs as he himself admitted and especially where there is no error with respect to their grant. I, therefore, find that the then regent of Kanvilli (DW2) could not have granted defendants plot no. 62.

43. On the totality of the evidence, I hold that the plaintiff has been able to satisfy the court on the preponderance of probabilities that plot no. 62 was validly allocated to him.

44. Let me now address the relief for general damages for trespass. Trespass to land, as a tort, is actionable per se. This means that once the act of trespass has been proven against the defendants, the plaintiff does not have to prove by evidence that he has suffered damages. The law presumes injury to the plaintiff to be a natural consequence of the defendants' act of trespass and therefore a claim for general damages will arise as of right by inference of the law, see the cases of **Klah v Phoenix Insurance Limited (supra)** and **Esi Yeboah v Mfantseman Municipal Assembly, Suit No. A2/6/2021 dated 13th October, 2022, HC.** To assess the extent of damages, the court is required to consider the circumstances of the case and in particular the acreage of the land on which the trespass was committed, the period of wrongful occupation of the land by the defendant and the damage caused, see the case of **Laryea Oforiwaa [1984-1986] 2 GLR 410** and **Ayisi v Asibey III & Ors. [1964] GLR 695**.

45. In **Mrs. Jennifer Kankam Nantwi & Anor. v Joseph Amenya [2019] DLSC 7842**, the Supreme Court unanimously held that, building on a contested land will not lead a court of equity and good conscience to give title in a land to a party who has not title to the land. A party who develops a land during the pendency of a suit or dispute,

does so at his own risk. The plaintiffs in the said case continued with the construction works without giving any thought to the pending matter. The court further held that:

> "The conduct of the plaintiffs, …was fraudulent and intended to overreach the defendant and accordingly cannot be the foundation of any order, for yielding to such a contention has the effect of allowing dishonourable conduct to prevail over societal expectations of the law representing the conscience of society in terms of that which is good and devoid of unworthy conducts."

46. From the evidence, plaintiff led evidence to the effect that the defendants had erected a structure on plot no. 62 as depicted in Exhibit G. The defendants through DW2 sought to overreach the plaintiff and that will not receive the blessings of this court. I, therefore, find that plaintiff had led sufficient evidence as to the extent of trespass or occupation for this court to assess the magnitude of damages. I shall, therefore, award general damages in the sum of GHS5,000.00.
47. Before I conclude, the Supreme Court in the case **Kofi Manu v Akosu Agyeiwaa & 3 Ors. [2013] DLSC 2572** held that, "…this court will not ordinarily grant any relief which a party has not formally asked for. The only instance when a relief has been, so to speak, granted without being specifically asked for is in an instance when that *relief emerges or is apparent from the evidence on record*." The court does so in order to do substantial justice to the parties, see **Hanna Assi (No. 2) v GIHOC Refrigeration and Household Products Ltd. (No.2) [2007-2008] 1 SCGLR 16**. From the evidence, the plaintiff did not plead for recovery of possession. However, it is apparent from the evidence that plaintiff is to recover possession of his land. In order to do substantial justice, I will, therefore, grant the relief of recovery of possession so as to afford the plaintiff in realising the other reliefs, particularly that the defendants are to remove the structure erected.

CONCLUSION

48. I hereby enter judgment in favour of the plaintiff for the following reliefs:

a. I declare title in favour of the plaintiff in respect of plot no. 62 Tuunaayili Residential Area Block A, Tamale.
b. Defendants are hereby ordered to remove any material deposited or structure erected on the said plot, forthwith. In effect, plaintiff is at liberty to recover possession of the said plot from the defendants.
c. The defendants, their assigns, workmen or any other representative are perpetually restrained from developing or trespassing or laying any claim to the said plot.
d. General damages for trespass assessed at GHS5,000.00.
e. Costs of GHS10,000.00 is assessed in favour of the plaintiff.

H/W D. ANNAN ESQ.

[MAGISTRATE]

SALISU B. ISSIFU ESQ. HOLDING THE BRIEF OF RASHID M. MUMUNI ESQ. FOR THE PLAINTIFF

ABRAHAM DAMTAR ESQ. HOLDING THE BRIEF OF ALHAJI M.S. ABDULLAH ESQ. FOR THE DEFENDANTS

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3. *In re Ashalley Botwe Lands; Adjetey Agbosu & Ors. v. Kotey & Ors. [2003-2004] SCGLR 420*

4. *Odametey v Clocuh [1989-90] 1 GLR 14, SC.*
5. *Kodilinye v Odu [1935] 2 WACA 336*
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