

IN THE DISTRICT COURT TWO TAMALE
HELD ON MONDAY 17TH JULY, 2023
BEFORE HIS WORSHIP D. ANNAN ESQ.

SUIT NO. A1/3/23

BETWEEN

ALHASSAN HAMIDU

-

PLAINTIFF

AND

1. ALHAJI ISSAH

-

DEFENDANTS

2. NORTHERN LIGHT INTERNATIONAL SCHOOL

JUDGMENT

1. This judgment relates to land.
2. The plaintiff described himself a native of Tamale while the 1st defendant is the proprietor of 2nd defendant. 2nd defendant is a private school registered under the laws of Ghana.

3. Plaintiff per his amended Writ and Statement of Claim filed on 20th February, 2023 seeks against the defendants the following:
 - a. Declaration that plaintiff is the owner of all that piece or parcel of land known as plot no. 88 situate and being at Choggu Manayili Residential Area Block III and bounded by plots numbers 87 and 89 and access roads.
 - b. An order of mandatory injunction on the defendants to refill the foundation trench they dug on plaintiff's aforesaid plot.
 - c. An order of perpetual injunction restraining the defendants, their agents, servants, assigns or persons claiming through them from interfering in whatever manner with the plaintiff's possession, ownership and use of his plot as described herein above.
 - d. Recovery of possession.
 - e. Damages against the defendants for trespassing to the land.
 - f. Costs.
4. The defendants also per their amended Statement of Defence filed on 2nd March, 2023 disputed plaintiff's claim saying that the 1st defendant is not a proper party to this suit and also that the disputed property does not belong to the plaintiff. Plaintiff filed an amended Reply dated 3rd March, 2023.
5. Prior to filing the amended processes, this court granted an interlocutory injunction restraining all parties, their agents workmen, assigns, heirs or privies from developing or having anything to do on the land in dispute, until the final determination of this case. This court also joined the 2nd defendant to this suit. The defendants' grantor sought to join this suit but same was withdrawn. Defendants were, however, advised to consider calling the said grantor as a witness, which they did.
6. The case of either party is detailed below.

PLAINTIFF'S CASE

7. Plaintiff per his amended witness statement filed on 7th March, 2023 averred that in 1999 he acquired the disputed plot and he was issued allocation paper by the then Choggu-Naa Salifu Alhassan. After the allocation, plaintiff indicated that he took possession of the said land and erected a two bedroom apartment at window level on it. He put his brother, Yakubu Mohammed, in charge as a caretaker. Plaintiff emphasized that in the 1st quarter of 2022, he continued the structure to lentel level, without any hinderance. Plaintiff contended that when he had raised the structure on the land to lentel level, he was invited to the Choggu-Naa's palace to produce his documents to the land, which he did. Again, he caused Mr. Salifu Abubakari, the son and former secretary of the late Choggu-Naa Salifu Alhassan to confirm his allocation documents to the new Choggu-Naa.
8. Plaintiff narrated that before he attended to the current Choggu-Naa's invitation, some boys from the Choggu-Palace had gone to used his blocks to erect pillars on the disputed land and that he (plaintiff) caused same to be destroyed. He added that the matter was reported to the police and when the police noticed that he had a grant from the previous Choggu-Naa, the police discontinued the matter. Plaintiff argued that a week to filing this case in court, the 1st defendant acting for and on behalf of the 2nd defendant erected a foundation trench on the land. Also, 1st defendant deposited sea sand on the disputed land indicating his readiness to commence development.
9. Plaintiff maintained that the current occupant of the Choggu-Skin is bound by the earlier grant, such that any subsequent grant to the 2nd defendant or any other person is invalid. Plaintiff added that assuming without admitting that his grant is invalid, he has adversely possessed the disputed land since 2004. Hence, this present action.

10. The plaintiff tendered in evidence the following exhibits in support of his case:

- a. Exhibit A – Allocation Paper dated 22/2/1999 together with a Site Plan
- b. Exhibits B, B1 and B2 – Allocation documents by the late Choggu-Naa Salifu Mohammed dated 7/3/1985, 10/4/90 and 15/1/994, respectively.
- c. Exhibit C - Picture of Structure erected by Plaintiff
- d. Exhibit D – Picture of the foundation trench dug by the Defendant.

11. Plaintiff caused be filed a witness statement by Abukari Salifu. However, he did not call him to the testify. Accordingly, the witness statement of the said Abukari Salifu is not part of plaintiff's case and same is struck out.

DEFENDANTS' CASE

12. 1st defendant testified for himself and on behalf of the 2nd defendant. According to him, the disputed land was sold to 2nd defendant by the current occupant of the Choggu Skin, Mohamadu Alhassan. He added that he conducted a Search before buying the disputed land and the result showed that the disputed land had being allocated to one Jacob Eugene Yeboah. He added that the Choggu skin could not trace the said Jacob Eugene Yeboah and that the palace promised to replace the land to Jacob Euguene Yeboah anytime he shows up. 1st defendant disputed that Abukari Salifu was the secretary to the late Choggu-Naa Salifu Alhassan. He contended further that if Abukari Salifu was the secretary then he should have known that the disputed plot had been allocated by the late Choggu-Naa Salifu Alhassan to multiple buyers, example Jacob Eugene Yeboah and Abdul Mumin Issahaku. He added the plaintiff represented to the current Choggu-Naa that the plot belonged to the Tolon-Naa, which turned out to be false. Defendants, therefore, maintained the plaintiff is not entitled to his reliefs.

13. The defendants tendered in evidence the following:

- a. Exhibit 1 – Copy of Certificate of Incorporation of 2nd defendant.
- b. Exhibit 2 – Copy of Allocation paper to 2nd defendant dated 8/08/22.

Defendants' Witnesses

14. Defendant called a witness in support of his case, Alhaji Safianu Mohammed (DW1).

He indicated that he is the secretary to the present Choggu-Naa, Mohamadu Alhassan. He corroborated the evidence of the Defendants. He added that the plot in disputed was allocated to 2nd defendant to serve the interest of the Choggu community. Again, they pledged to allocate a new plot to Jacob Eugene Yeboah if he shows up. Furthermore, the money realized from the allocation to 2nd defendant had been applied to the construction of the new Choggu palace. DW1 tendered in evidence the following exhibits:

- a. Exhibit 3 – Copy of Allocation paper to Abdul Mumin Issahaku dated 9/1/04.
- b. Exhibit 4 – Copy of Allocation paper similar to that dated 9/1/04 but to no recipient.
- c. Exhibit 5 – Search Report dated 18/11/21.

ISSUES FOR DETERMINATION

15. The issues borne out by the facts are:

- a. *Whether or not the plaintiff has capacity to institute this case?*
- b. *Whether or not the 1st defendant is a proper party to this case?*
- c. *Whether or not the property in dispute was allocated to the plaintiff by the Choggu-Skin?*

- d. *Whether or not the plaintiff has forfeited his allocation in acknowledging another lessor?*
- e. *Whether or not the Choggu-Skin was entitled to re-enter the disputed plot?*
- f. *Whether or not the plaintiff's structure on the disputed land amounts to adverse possession?*

BURDEN OF PROOF

16. In civil cases, the general rule is that the party who in his pleadings 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 and **Sarkodie v FKA Company Ltd. [2009] SCGLR 65**.

17. With regards to what is required of the plaintiff in land properties, the law is that 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."

ANALYSIS OF THE ISSUES

Issues a and b.

18. I will consider issues a and b together, thus, *whether or not the plaintiff has capacity to institute this case and whether or not the 1st defendant is a proper party to this case?* Capacity

to bring and/or maintain an action remains a cardinal hurdle that must be jumped if either party is to remain in a case. The law is trite that a party to an action must have capacity and that an objection to capacity of a party may be raised at any time, see **Sam Jonah v Duodo-Kumi [2003-2004] 1 SCGLR 50**. In **R v High Court, Accra, Ex parte Aryeetey (Ankra Interested Party) [2003-2004] 1 SCGLR 398** the Supreme Court held that, “any challenge to capacity therefore puts the validity of the writ in issue. It is a proposition familiar to all lawyers that the question of capacity, like the plea of limitation, is not concerned with the merits ...”. In effect, where it is established that a party does not have capacity or is not a proper person to a suit, then there is no need to go into the merits of the case. The suit is to be dismissed, see the cases of **Sarkodie v Boateng II [1982-83] 1 GLR 715 SC**, **Fosua & Adu Poku v Dufie (Dec’d) v Adu Poku Mensah [2009] SCGLR 310**, **Duah v Yorkwah [1992-1993] 1 GBR 278 CA**, **HFC Bank (Ghana) Ltd. v Abeka Suit No. J4/5/2018 dated 12th June, 2019**, **Kasseke Akoto Dugbartey Sappor & 2 Ors. v Very Rev. Solomon Dugbatey Sappor & 4 Ors. Suit No. J4/46/2020 dated 13th January 2021, SC (unreported)**.

19. From the evidence, the defendants contended that the plaintiff does not have capacity to institute this action. Again, they contended that the 1st defendant is not a proper party to be sued. Defendants are, therefore, enjoined by law to prove their allegations. According to the defendants, the name of the plaintiff is rather Alfa Hamdu Alhassan. The name per the title of this suit is Alhassan Hamidu. Plaintiff, on the other hand, maintained that he is the same person. Below is an extract when plaintiff was under cross-examination:

“Q: Kindly repeat your full name to this court?

A: Alhassan Hamidu

....

Q: *You are not Alhassan Hamidu?*

A: *That is my name.*

Q: You are not the one claiming to be the owner of the plot in contention?

A: I am the owner of the land in dispute.

Q: *Do you have an ID card on you?*

A: *I did not bring it.*

...

Q: Is this the copy of the Ghana Card?

A: Yes.

Q: *Kindly mention the name on the document?*

A: *Alfa Hamdu Alhassan*

Q: I hope you are a Muslim?

A: Yes.

Q: You agree with me that Hamidu is different from Hamdu?

A: No, I am the same person.

Q: The Alfa name on the document, is it part of your surname?

A: It is part of my surname.

...

Q: *You agree with me that when this issue came up, you were invited by the current Choggu-Naa?*

A: Yes.

...

Q: At the last adjourned date you brought a copy of your Ghana Card as requested?

A: Yes."

20. When the defendant was under cross-examination, this is what also ensued:

"Q: Would you agree with me that in Islam, various names may refer to the same name, example Alhassan could also be called Hassan, is that correct?

A: I am not knowledgeable enough to answer that question.

Q: Alhaji could also be referred to as Hajj?

A: Yes.

Q: Hamidu could also be referred to as Hamdu?

A: I am not aware it is the same name.

Q: But you are aware that a person may be called by various names such that others may know him by different names.

A: Not officially.

Q: *That it is the plaintiff in court who is challenging you to the land in dispute, there is no other person aside him?*

A: Yes."

21. Let me at this point also share my experience I have encountered when I assumed my role here as a Magistrate. I have come across some of the Muslim/Islamic names mentioned or spelt differently. For example, Mohamadu some say/write Mohammed, Abdullah some say/write Abdullai, Abubakari some say/write Abukari, Alhassan same say/write Hassan, etc. I do take judicial notice of same. In this present issue, what was required of counsel for defendants was to lead sufficient evidence to the fact that the plaintiff herein is an imposter or that the real Alhassan Hamidu exists. But counsel for defendants failed to do so. Counsel for defendants did not even put in or tender in evidence the said Ghana Card in disputing the name of the plaintiff. All that he did was to question the name, as noted above. Interestingly, neither the defendants nor their witness, DW1, denied that the plaintiff in this suit is not the same person they and the current Choggu-Naa have been dealing with. From the evidence so far, I find that the plaintiff did not lead sufficient evidence to establish that the plaintiff herein does not have capacity to institute this suit, see **Sarkodie v Boateng II (supra)**. I find that the plaintiff is the same person

defendants have been dealing with, save that the title of this suit did not capture his full name. Also, as noted earlier, some of the Muslim/Islamic names are used interchangeably to mean the same person, and I so hold.

22. Now, the defendants also argued that the 1st defendant is not a property party to this suit. According to counsel for the defendants, the 2nd defendant is a limited liability company, see Exhibit 1. Also, the disputed land was sold to 2nd defendant but not to the 1st defendant. To him, 1st defendant was only acting on behalf of the 2nd defendant. Therefore, since the company is a separate legal entity, the 2nd defendant is the proper person to be sued but not the 1st defendant.

23. The law is clear that a company is a separate legal entity. It can sue and be sued, see **Salomon v Salomon (1897) AC 22**. Thus, a company although clothed with the capacity to act, it acts through its officers/members. The law recognises these officers/members as directing the mind and will of the company. Justice Torkornoo JA (as she then was) in **Suit No. H1/170/14: Robert Ashie Kotie Ventures Ltd v Sadat Car Accessories Enterprise & Anor. dated 11/6/15, CA (unreported)** puts it simply as, “The state of mind of these managers is the state of mind of the company”. However, there are instances where an officer of a company can be held personally liable. This is known as the ‘lifting the veil’ doctrine. In **Morkor v Kuma (No. 1) [1999-2000] 1 GLR 721**, Sophia Akuffo JSC (as she then was) established three broad bases upon which this doctrine applies, i.e. (a) dictates of justice, (b) public policy or (c) under statute. The court held, “...in the absence of these factors driving the case such as fraud, improper conduct, deliberate attempts at evasion of legal obligations, or other devises or willful misdeeds on the part of the appellant, ...the majority of the Court of Appeal erred in lifting the veil of incorporation upon those allegations and finding the appellant personally liable for the 1st defendant’s debts and a proper

person to be sued with the 1st defendant for the recovery of the debt owed the respondent by the 1st defendant”.

24. From the evidence, I did not find any evidence of fraud, improper conduct, evasion of legal obligation or willful misdeeds on the part of the 1st defendant. I find that the 1st defendant was sued simply because he is the proprietor of the school. If plaintiff had done his due diligence, I believe he would not have sued the 1st defendant and the 2nd defendant at the same time. Accordingly, the 1st defendant is not a proper party to this suit and therefore this suit cannot be maintained against him, personally, see **HFC Bank (Ghana) Ltd. v Abeka (supra)** and **Morkor v Kuma (supra)**.

Issues c, d, e and f.

25. I will now consider issues c, d, e and f together. Thus, *whether or not the property in dispute was allocated to the plaintiff by the Choggu-Skin, whether or not the plaintiff has forfeited his allocation in acknowledging another lessor, whether or not the Choggu-Skin was entitled to re-enter the disputed plot, whether or not the plaintiff's structure on the disputed land amounts to adverse possession?*

26. Now, the law is that, “[i]n an action for a declaration of title, a plaintiff who failed to establish the root of title must fail because such default was fatal to his case.” See the case of **Ogbarmey-Tettey v. Ogbarmey-Tetteh [1993-94] 1 GLR 353**. His Lordship Atuguba JSC (as he then was) in **Fosu & Adu-Poku v. Dufie (Dec’d) & Adu-Poku-Mensah (supra)**, citing the celebrated case of **Odoi v. Hammond [1971] 2 GLR 275**, held that:

“It is now common learning in this country that in an action for declaration of title to land, the onus is heavily on the plaintiff to prove his case, and he

cannot rely on the weakness of the defendant's case. He must indeed 'show clear title'..."

27. In the case **Ago Sai & Ors. v Kpobi Tetteh Tsuru III** [2010] SCGLR 762, the Supreme Court speaking through His Lordship Ansah JSC at page 779 also had this to say:

"This being an action for a declaration of title in land, the burden of proof and persuasion remained on the plaintiffs to *prove conclusively*, that on a balance of probabilities, he was entitled to his claim of title. This he could do by proving on the balance of probabilities the *essentials of their root of title and method of requiring title to the area in dispute...*"

28. In effect, where the evidence is unsatisfactory, the judgment should be in the defendant's favour on the ground that it is the plaintiff who seeks relief but has failed to prove what he claims, see the case of **Dugabor v Akyea-Djamson** [1984-86] 1 GLR 697 @ 709 CA.

29. 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-Lamprey (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."

30. 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.

31. Based on the above, the legal burden is on the plaintiff to establish the property in dispute belongs him, see **Okudzeto Ablakwa (No. 2) v. Attorney-General & Obetsebi-Lamprey (No. 2) (supra)**. Failing which, an unfavourable ruling shall be entered against him. Where plaintiff succeeds, the burden then shifts to the defendants to establish that the property in dispute was lawfully allocated to them, see **Ababio v Akwasi III (supra)**.

32. Now, forfeiture in land law means that a person denying the title of his grantor, see **Ohimen v Adjei** [1957] 2 WALR 275. A person who, therefore, denies the title of his or her lessor or landlord, either by claiming that title to the subject matter is vested in himself or herself or someone else forfeits his or her interest, see also the cases **Quartey v Entertainment & Tourist Development Co. Ltd & Ors.** [1992] 2 GLR 298 and **Antie & Anor. v Ogbo** [2005-2006] SCGLR 494,

33. Regarding re-entry, the landlord or the grantor is required to go to court for an order of re-entry, see **Kuma & Anor. v Koi-Larbi** [1991] 1 GLR 537, SC. His Lordship Aikins JSC (as he then was) stated in **Western Harwood Ltd v West African Enterprises Ltd.** [1998-99] SCGLR 105 at page 122 as follows:

“...Furthermore, the enforceability of the re-entry shall be by action or otherwise, and by section 30(1) where the lessor proceeds by action or otherwise to enforce

his right of entry or forfeiture under any of the provision in a lease, or for non-payment of rent, the lessee may, either in the lessor's action or in any action brought by such person for that purpose, apply to the court for relief. *It means, therefore that the Apowa Stool can only legally divest the plaintiff of his lease and resell the property to the first defendant by action in court."*

34. The above has been reproduced in the new Lands Act, 2020 (Act 1036). Section 57(1) of Act 1036 on restriction on re-entry and forfeiture, provides that:

"A right of re-entry or forfeiture under a provision in a lease for a breach of a covenant, condition, or agreement in the lease is not enforceable by court action or any other means, unless:

(a) the lessor has served on the lessee a notice

(i) specifying the particular breach complained of,

(ii) requiring the lessee to remedy the breach, if the breach is capable of remedy, and

(iii) requiring the lessee to make reasonable compensation in money for the breach, except where the breach consists of non-payment of rent;

(b) the lessee has knowledge of the fact that the notice has been served, and

(c) the lessee fails, within a reasonable time after the service of the notice under paragraph (a), to remedy the breach, if that breach is capable of remedy, or to pay compensation, to the satisfaction of that lessor, for the breach or in the case of non-payment of rent, to pay the rent and interest on the rent at the prevailing bank rate."

35. Lastly, regarding adverse possession, in the case, **Binga Dugbartey Sarpor v Ekow Bosomprah [2020] DLSC 9922** the Supreme Court cited with approval the definition

of adverse possession by **Brain A. Garner** in the **Blacks' Law Dictionary, 9th Edition** as: "[T]he 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.*" See also the case of **Ebenezer Kwaku & Anor. v Mankralo Tetteh Otibu IV [2021] DLSC 10790**. In establishing what constitutes adverse possession, His Lordship Ansah JSC (as he then was) in the case **Antwi v Abbey [2010] SCGLR 17** stated that, "*Acts amounting to establishing adverse possession are many and may be in the nature of fencing the property, posting signs posts, planting crops, building or raising animals in a manner that a diligent owner could be expected to know about them. The list may be taller still.*" Hence, the 12years limitation period under section 10(1) of the Limitation Act, 1972 (NRCD 54) does not run, unless the person against whom a suit is instituted for recovery of land is in adverse possession of same.

36. In the instant case, the plaintiff maintains that he acquired the property in dispute from the late Choggu-Naa Salifu Alhassan in 1999. After the said allocation, he took possession of the said land and erected a two bedroom apartment which is presently at lentel level, without any hinderance. He averred that when he had raised the structure on the land to lentel level, he was invited to the Choggu-Naa's palace to produce his documents. He explained that since he is from a royal family, i.e. the Tolon-Skin, he informed his elders to meet with the Choggu-Skin. He added that the involvement of the Tolon-Skin was in no way a denial of his grantor's title. Moreover, he caused Mr. Abukari Salifu, the son and former secretary of the late Choggu-Naa Salifu Alhassan to confirm his allocation documents to the new Choggu-Naa. He denied knowledge of any action by the current Choggu-Naa as having re-entered the disputed land. Also, plaintiff maintains that he has been on the disputed land for over 12years, without any hinderance. Furthermore, the 2nd defendant saw the

structure/development on the land before buying same from the current Choggu-Naa. Hence, the 2nd defendant is not clothed in law and equity to claim the disputed land.

37. Now, 2nd Defendant, on its part argued that the disputed land was sold to it by the current occupant of the Choggu Skin, Mohamadu Alhassan. It added that a formal Search was conducted before buying and the result was that the disputed plot had being allocated to one Jacob Eugene Yeboah. DW1 added that the Choggu skin could not trace the said Jacob Eugene Yeboah and that the palace promised to replace the plot to Jacob Euguene Yeboah anytime he shows up. He submitted further that there has been multiple sales of the disputed land, as a result the current Choggu-Naa sought to re-enter the land, save the injunction granted by this court. 2nd defendant also indicated that the plaintiff represented to the Choggu-Naa that the plot belonged to the Tolon-Naa.

38. The legal issues identified above were answered in the evidence below. When the plaintiff was under cross-examination, this is what ensued:

“Q: When did you acquire the land?

A: 1999.

Q: You agree with me that you did not conduct a search when you were acquiring the land?

A: I conducted a search.

...

Q: Which date did you conduct the search?

A: Around 2000

Q: I am putting to you that your acquisition could not have predated the search, if you conducted it in 1999?

A: I bought the land and later I returned for the document and it was given.

Q: *I am putting it to you that if you had conducted a search before you acquired the said land you would have realised that the land belongs to Eugene Jacob Yeboah?*

A: *My search was at the chief palace and that was the only search I conducted.*

Q: Which of the chief's palace?

A: The late Choggu-Naa Salifu's palace.

...

Q: *You first claimed that the plot in question belongs to Tolon-Naa, when you appeared at the chief palace?*

A: *I did not say that.*

...

Q: *As you stand now, is it your case that Tolon-Naa is the owner of the land who gave it to you?*

A: *I bought it from Choggu-Naa.*

Q: *So why did you send the elders of Tolon-Naa to Choggu palace?*

A: *The elders are my uncles and I am also from the Tolon-Naa chief palace, so when this matter came up and there was a chief involved, I also involved my elders.*

Q: *When you involved the elders and the Choggu-Naa asked for the documents, you failed to submit it?*

A: *The documents were not with me in Tamale.*

...

Q: *I am putting it there are multiple people claiming plots no. 88 from Choggu Naa Salifu, you grantor?*

A: *I am not aware.*

Q: *And because of these multiple claims that is why the current Choggu-Naa exercised his right of re-entry and allocated it to Northern Light, 2nd defendant?*

A: *I am not aware. I acquired this plot for about 15years now and I had not received any challenge of claim to this plot by anybody.*

Q: *You did not receive any challenge because you are not the grantor, the Choggu-Naa is?*

A: *I started the construction from foundation to where it is now, no one has ever challenged my title.*

...

Q: *Any purported allocation of plot no. 88 to you was invalid as the land had been allocated to one Eugene Yeboah as well as other persons?*

A: *I am not aware of all these."*

39. Below is an extract of the 1st defendant, when he was also under cross-examination:

"Q: Per your Exhibit 2, the date of allocation is just last year 2022?

A: Yes.

Q: *Now when you went to the land to dig a foundation, you saw that there was a building on the land, in that correct?*

A: Yes.

...

Q: *From your account, you understand that the Choggu-Naa can revoke the lease by an order of the court?*

A: Yes.

Q: *At the time of your purported purchase up to this point that you are in the box, the Choggu-Naa has not shown you any order of this court giving the land to him?*

A: *That is correct. I must have jumped the gun by trying to secure the land before the Choggu-Naa proceeded to getting the lease revoked. And it was in this process that I got a fence wall to be done, but the plaintiff got the injunction. Since the case is in court, the Choggu-Naa did not get the lease revoked.*

...

Q: *I am suggesting to you that the plaintiff acquired the land from the late Choggu-Naa Salifu Alhassan in 1999, in 2004 he had a foundation on the land?*

A: *I would not know that. I did a search and the result indicated as well as the Choggu-Naa informed me there was a previous lease and the name on the lease was one Eugene Yeboah.*

Q: You will agree with me that Jacob Eugene Yeboah, that person is not before this court?

A: Yes.

Q: And you are also not in court under his orders or authority to claim the land?

A: Yes."

40. When DW1 was under-cross examination, below is an extract of what ensued:

Q: *Are you aware that the land in dispute, the Government of Ghana gave it back to the skin?*

A: Yes.

Q: *And that period that the Government of Ghana gave it back to the chief, the Choggu-Naa Salifu Alhassan was the occupant at that time?*

A: Yes.

...

Q: Is it your case that Choggu-Naa Salifu earlier allocated the land to Abdul Mumin Issahaku?

A: Yes. It was that allocation letter that came in addition to that of Alhassan Hamidu's allocation, that they brought to the chief palace claiming to refer to one plot. The Choggu-Naa asked me to conduct a search. The search report showed that Jacob Eugene Yeboah owns the land and he was nowhere to be found.

Q: Abdul Mumin Issahaku is not before this court claiming plot no. 88, is that not so?

A: Yes.

...

Q: *The plaintiff herein say he first laid the foundation on the plot in 2004, you have no information about that, is that not correct?*

A: *I have information. Because he was claiming the land belongs to the Tolon-Naa and because it does not belong to Tolon-Naa, it means he was stealing it.*

Q: You have never seen the plot shown in any document with the name of Tolon-Naa, is that correct?

A: Yes. Never.

...

Q: But what is true is that there is a structure on the said land which plaintiff claims it is his?

A: It is true. He was called to the palace for compensation and he refused."

41. On the totality of the evidence, I find that there are multiple sales regarding this disputed land. First, the Search Report from the Lands Commission, Exhibit 5, indicated that there is a lease between the Republic of Ghana (as Trustees for Choggu-Naa Skin of Tamale) and Jacob Eugene Yeboah, effective 1st May, 1976 to 30th April, 2075. Secondly, there is an allocation by the late Choggu-Naa Salifu Alhassan to the plaintiff, dated 22/2/1999. Next, there is an allocation by the late Choggu-Naa Salifu Alhassan to Abdul Mumin Issahaku, dated 9/1/2004. Next, the present allocation by the Choggu-Naa, Mohamadu Alhassan to the 2nd defendant, dated 8/08/2022. From the evidence, I find that the Republic of Ghana had released the said lands back to the Choggu-Skin. This was asserted to by DW1. In fact, he indicated that it was given back to the Choggu-Skin during the reign of the late Choggu-Naa Salifu Alhassan. It is, however, not clear to this court whether or not the late Choggu-Naa, Salifu Alhassan, by an action in court re-entered the disputed property against Jacob Eugene Yeboah before the sale to the plaintiff. Hence, the plaintiff's allocation letter cannot stand that of Mr. Jacob Eugene Yeboah. Also, the Choggu-Skin, acting through its present chief, Choggu-Naa Mohammadu Alhassan, could not grant same without taking an action to re-enter. Thus, there is no evidence to the effect that the current Choggu-Skin also re-entered the land before selling same to 2nd defendant, see **Western Harwood Ltd v West African Enterprises Ltd** . (supra) and s. 57 of Act 1036.

42. Nonetheless, the plaintiff has erected a structure on the disputed land since 2004 without any let or hinderance, until 2022 when he was summoned before the Choggu-

Skin. 2nd defendant knew of the plaintiff's structure and yet went ahead to buy the land. Also, as DW1 puts it, "*He (plaintiff) was called to the palace for compensation and he (plaintiff) refused.*" It means that 2nd defendant and the current Choggu-Naa knew about the structure on the disputed and yet went ahead to execute Exhibit 2, without an order of re-entry. Regarding forfeiture, I find that the plaintiff never disputed the Choggu-Skin as his grantors, see Exhibits A and B series. Hence, in this instant case a relief against forfeiture will therefore not apply, see **Quartey v Entertainment & Tourist Development Co. Ltd & Ors. (supra)** and **Antie & Anor. v Ogbo (supra)**. I also find that plaintiff has demonstrated ownership over the disputed land since 2004, without any let or hinderance. Therefore, he can clothe himself with the decision in **Antwi v Abbey (supra)** to claim adverse possession. Accordingly, the subsequent sale of the disputed land by the current Choggu-Naa to the 2nd defendant is null and void. Exhibit 2 is hereby set aside and cancelled.

43. Finally, trespass to land, as a tort, is actionable per se. This means that once the act of trespass has been proven against a defendant, 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 defendant's 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 Co. Ltd. (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 cases of **Laryea v Oforiwaa [1984-1986] 2 GLR 410** and **Ayisi v Asibey III & Ors. [1964] GLR 695**. From the evidence, the 2nd defendant admitted digging a foundation trench for its fence wall. Having determined that 2nd defendant did not have a valid

claim to be on the land in dispute, its actions amount to trespass, and I so hold. Considering the dug up trench which is to be re-filled, I shall award damages in the sum of GHS10,000.00 against the 2nd defendant. I will, however, not grant the relief of the plaintiff for 2nd defendant to refill the dug trench, since I have awarded damages for same.

CONCLUSION

44. In conclusion, I hereby enter judgment in favour of the plaintiff as follows:

- a. I declare that plaintiff is the owner of all that piece or parcel of land known as plot no. 88 situate and being at Choggu Manayili Residential Area Block III.
- b. An order of perpetual injunction restraining the 2nd defendant, its agents, servants, assigns or persons claiming through it from interfering in whatever manner with the plaintiff's possession, ownership and use of his plot as described herein above.
- c. Plaintiff is at liberty to recover possession of the disputed land.
- d. Damages against the 2nd defendant is assessed at GHS10,000.00.
- e. Exhibit 2, the purport allocation of the plot in issue to 2nd defendant is hereby declared null and void and same is set aside.
- f. Costs of GHS3,000.00 is awarded in favour of the plaintiff.

H/W D. ANNAN ESQ.

[MAGISTRATE]

SYLVESTER ISANG ESQ. WITH LAMBONG SAMPSON ESQ. FOR PLAINTIFF

ALHAJI MOHAMMED SHAIBU ABDULLAH ESQ. WITH ABRAHAM N. DAMTAR
ESQ. FOR THE DEFENDANTS

References:

1. ss. 11(4), 12(1) and (2) and 14 of the Evidence Act, 1975 (NRCD 323)
2. s. 57(1) of the Lands Act, 2020 (Act 1036)
3. s. 10(1) of the Limitation Act, 1972 (NRCD 54)
4. *Faibi v State Hotels Corporation* [1968] GLR 471
5. *In re Ashalley Botwe Lands; Adjetey Agbosu & Ors. v. Kotey & Ors.* [2003-2004] SCGLR 420
6. *Sarkodie v FKA Company Ltd.* [2009] SCGLR 65
7. *Odametey v Clocuh* [1989-90] 1 GLR 14, SC.
8. *Kodilinye v Odu* [1935] 2 WACA 336
9. *Osei v Korang* [2013] 58 GMJ 1
10. *Sam Jonah v Duodo-Kumi* [2003-2004] 1 SCGLR 50.
11. *R v High Court, Accra, Ex parte Aryeetey (Ankra Interested Party)* [2003-2004] 1 SCGLR 398
12. *Sarkodie v Boateng II* [1982-83] 1 GLR 715 SC
13. *Fosua & Adu Poku v Dufie (Dec'd) v Adu Poku Mensah* [2009] SCGLR 310
14. *Duah v Yorkwah* [1992-1993] 1 GBR 278 CA
15. *HFC Bank (Ghana) Ltd. v Abeka* Suit No. J4/5/2018 dated 12th June, 2019
16. *Kasseke Akoto Dugbartey Sappor & 2 Ors. v Very Rev. Solomon Dugbatey Sappor & 4 Ors.* Suit No. J4/46/2020 dated 13th January 2021, SC (unreported)
17. *Salomon v Salomon* (1897) AC 22
18. *Suit No. H1/170/14: Robert Ashie Kotie Ventures Ltd v Sadat Car Accessories Enterprise & Anor.* dated 11/6/15, CA (unreported)
19. *Morkor v Kuma* (No. 1) [1999-2000] 1 GLR 721

20. *Ogbarmey-Tettey v. Ogbarmey-Tetteh* [1993-94] 1 GLR 353
21. *Odoi v. Hammond* [1971] 2 GLR 275
22. *Ago Sai & Ors. v Kpobi Tetteh Tsuru III* [2010] SCGLR 762
23. *Dugabor v Akyea-Djamson* [1984-86] 1 GLR 697 @ 709 CA
24. *Okudzeto Ablakwa (No. 2) v. Attorney-General & Obetsebi-Lamptey (No. 2)* [2012] 2 SCGLR 845 at page 867
25. *Majolagbe v. Larbi* [1959] GLR 190
26. *Klah v. Phoenix Insurance Company Limited* [2012] 2 SCGLR 1139
27. *Ohimen v Adjei* [1957] 2 WALR 275
28. *Kuma & Anor. v Koi-Larbi* [1991] 1 GLR 537, SC
29. *Western Harwood Ltd v West African Enterprises Ltd.* [1998-99] SCGLR 105 at page 122
30. *Binga Dugbartey Sarpor v Ekow Bosomprah* [2020] DLSC 9922
31. *Ebenezer Kwaku & Anor. v Mankralo Tetteh Otibu IV* [2021] DLSC 10790.
32. *Antwi v Abbey* [2010] SCGLR 17
33. *Esi Yeboah v Mfantseman Municipal Assembly, Suit No. A2/6/2021 dated 13th October, 2022, HC*
34. *Laryea v Oforiwaa* [1984-1986] 2 GLR 410
35. *Ayisi v Asibey III & Ors.* [1964] GLR 695
36. *Blacks' Law Dictionary, 9th Edition*