

IN THE DISTRICT COURT 2, TAMALE
HELD ON THURSDAY 23RD FEBRUARY, 2023
BEFORE HIS WORSHIP D. ANNAN ESQ.

SUIT NO. A8/5/22

BETWEEN

MOHAMMED SEIDU & 3 ORS. - PLAINTIFFS

AND

MAJEED ABUBAKARI & ANOR. - DEFENDANTS

JUDGMENT

INTRODUCTION

1. This judgment relates to land.

2. The plaintiffs initiated this action as administrators and surviving children of the late Seidu Dagomba. The defendants are described as extended family relations of the plaintiffs and are not children of the late Seidu Dagomba. The reason why the name of the late Seidu Dagomba comes up in this case is that the plaintiffs maintain that the subject matter of this dispute, H/No. I 111, Poloya Fong, Tamale is the personal property of the said Seidu Dagomba and that it devolved on them on the passing of

Seidu Dagomba. Defendants, on the other hand, disputes this assertion and aver that the said house is a family property of the late Dohina Wumbiyeli, their grandfather.

3. On 16th June, 2022 the plaintiffs instituted this action against the defendants for the following reliefs:

- a. A declaration that H/No. I 111, Poloya Fong, Tamale was the self-acquired property of Seidu Dagomba per a year on year lease dated 26th October, 1956.
- b. A declaration that upon the death of Seidu Dagomba intestate, the said house devolved upon his personal representatives.
- c. A declaration that upon the grant of the Letters of Administration by the Circuit Court, Tamale, H/No. I 111, Poloya Fong, Tamale became the property of the plaintiffs who are the only surviving children of Seidu Dagomba.
- d. A declaration that under Dagbon Customs and Practices when a man dies, his property is inherited by his surviving children.
- e. Order ejecting the defendants, their assigns and agents or all persons deriving interest in H/No. I 111, Poloya Fong, Tamale from the said house and recovery of possession for the plaintiffs.
- f. An order of perpetual injunction restraining the defendants herein, their assigns, children, agents, workmen and all other persons however called from interfering with plaintiffs' possession, ownership, occupation and usage of H/No. I 111, Poloya Fong, Tamale.
- g. Costs."

4. As already mentioned, the defendants disputed the claim of the plaintiffs. They filed a Statement of Defence through their counsel on 28th June, 2022.

5. The respective cases of the parties herein are detailed below.

PLAINTIFFS' CASE

6. 1st plaintiff testified for and on behalf of the other plaintiffs. The summary of plaintiffs' case is that at all material times H/No. I 111 Poloya Fong, Tamale was the self-acquired property of the late Seidu Dagomba. According to plaintiffs, the said property was acquired by their father, Seidu Dagomba on 20th October, 1956. They added that it has remained the personal property of their father until his death on 17th September, 1962. 1st plaintiff averred that upon the death of their father, the said property devolved on the plaintiffs herein as the personal representatives of Seidu Dagomba. Later on 22nd April, 2022 the plaintiffs (applicants therein) filed for Letters of Administration at the Circuit Court, Tamale and same was granted to them.

7. Plaintiffs contended that the property in dispute is not a family property of the Dohina Wumbeyili family. According to plaintiffs, the 1st defendant and one of the children of the 2nd defendant currently live in the said property and they were permitted to live there because they are members of the extended family. However, when plaintiffs notified them to move out, defendants have failed to move claiming it is a family property. Plaintiffs added since defendants and/or their agents were allowed by the plaintiffs to live in the said property, they cannot claim adverse possession or that this action is caught by statute of limitation. Plaintiffs disputed that the defendants have not lived in the said property for 70yrs or more. Rather, 1st defendant's father, Abukari, nicknamed "Karinjani Bisaa" which literally means "liquid faeces", made him run away from Nyhohini to stay with plaintiffs' father at H/No. I 111, Poloya Fong, Tamale. 1st plaintiff stated further that when Abukari moved into the said property, he came there with his son, the 1st defendant. They were permitted to live

in the disputed house and after the demise of Seidu Dagomba, plaintiffs equally allowed 1st defendant to continue his stay. 1st plaintiff added that 2nd defendant did not lived in the said house prior to the death of Seidu Dagomba, he only lived there with the permission of the plaintiffs after the death of 1st defendant's father which is less than 10years ago. Plaintiffs contended further that all those who lived/live in disputed property were allowed by their late father or at their permission and that some of them have moved out to their own places, save 1st defendant and 2nd defendant's son who continue to live there. According to 1st plaintiff, 1st defendant's grandfather, Dohina Wumbeyili, built a house at Nyhohini for Abukari to vacate this disputed property, but the said Abukari sold it. He maintained that his grandfather, Dohina Wumbeyili, never owned the disputed house, rather in his life time lived at Nyhohini until his death and was buried at the family house at Nyhohini.

8. In effect, plaintiffs maintained that the property in dispute in the personal property of their father and same has devolved on them. Plaintiffs tendered in evidence the following:
 - a. Exhibit A – copy of the Lease Agreement between the Governor and Commander-in-Chief of the Gold Coast and Seidu Dagomba, dated 20/10/1956.
 - b. Exhibit B – copy of the Letters of Administration granted to the plaintiffs herein, dated 22/4/22.

Plaintiffs' witness

9. Plaintiffs called one witness, Mr. Issifu Mumuni (PW1). He corroborated the evidence of plaintiffs and added that after the death of plaintiffs' father, the documents of the disputed house were given to his father, Mumumi Suguri, for keeps. He stated that before the demise of his father, his father called him and 1st plaintiff before the

Nyohini Liman, Ibrahim Mahama, and gave the documents to Adam Amidu and informed them that the disputed property belongs to the plaintiffs. Later, Adam Amidu gave the documents to 2nd defendant to keep and that anytime he needed it he would call on him. However, when Adam Amidu needed it and he sent 1st plaintiff and PW1 to 2nd defendant, 2nd defendant indicated that the documents could not be found. The matter was reported to the Kamina Barracks, because the late Seidu Dagomba was a worker there. It then took the efforts of Kamina Barracks for 2nd defendant to release the said documents.

DEFENDANTS' CASE

10. Both defendants indicated in their witness statements to testify for and on behalf of the other. However, at the time of taking evidence, both of them indicated to testify. Their evidence, in fact, are similar. According to them, they lived in the said disputed house for over 60years. They contended that since childhood the disputed house has been known as a family house of their grandfather, Dohina Wumbiyeli. They added that members of Dohina Wumbiyeli family have lived there, including their fathers and that no one has ever laid claim to the disputed house as his own. They stated that neither the plaintiffs were born in the said house or even lived there. They indicated that having lived in the disputed house for over 60years without any claim, whatsoever, this present action is statute-barred. They contended further that said document, Exhibit A, being held by the plaintiffs is a forged document and that the disputed property is the property of the Dohina Wumbiyeli family.

11. Defendants' caused an additional witness statement to be filed. However, the said witness statement was withdrawn and same was struck out. Defendants did not file any exhibit.

ISSUES FOR DETERMINATION

12. The issues borne out of the facts are:

- a. *Whether or not this action is statute barred?*
- b. *Whether or not the disputed house, H/No. I 111, Poloya Fong, Tamale is a family property or a self-acquired property of plaintiffs' father?*

BURDEN OF PROOF

13. 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) & (2) of NRCD 323.

14. It is when the claimant has established an assertion on the preponderance of probabilities that the burden shifts onto the other party, failing which an unfavourable ruling will be made against him, see s. 14 of NRCD 323 and the case of **Ababio v Akwasi III [1995-1996] GBR 774**.

ANALYSIS OF THE ISSUES

Issue a

15. Issue a is *whether or not this actions is statute barred?* 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.”

16. His Lordship Justice Dotse JA (as he then was) in the case **Tsuru III v Obodai & Ors. Suit No. H1/228/04, 2008 Unreported** had this to say in explaining what constitutes laches, acquiescence and adverse possession:

“It is important to note that the common law and equity evolved the principles of laches and acquiescence. *It operates to protect the innocent or to sanction the non-vigilant or indolent party to a suit.* However, since 1972 Ghana passed or enacted Limitation Decree, NRCD 54. The general effect of the principles of laches and acquiescence and the Limitation Decree is to limit the time within which action ought to be taken by a party to vindicate or enforce his legal rights by civil action. Whereas the courts applying the principles of laches and acquiescence exercise discretion in the circumstance to fix or bar an action for undue delay, *NRCD 54 fixes a definite time bar.*”

17. Further in **Alec Grant Sam & Ors. v Unilever Ghana Ltd & Ors. [2016] DLSC 2828**, the Supreme Court held that, “Laches refers to slackness or unreasonable delay in pursuing their right or claim upon discovery of the fraud in respect of the disputed land. Acquiescence refers to a person’s tacit or passive acceptance, implied consent to an act.” In **Bio & Anor. v Adjei & 12 Ors. [2014] DLSC 2874** the court held that, “Adverse possession must be open, visible and unchallenged so that it gives notice to the legal/paper owner that someone is asserting a claim adverse to his.”

18. The Supreme Court in **Ebenezer Kwaku & 2 Ors. v Mankralo Tetteh Otibu IV [2021] DLSC 10790** in a unanimous decision held that long possession with the permission of the true owner does not avail the possessor the defence of adverse possession under the Limitation Act. Speaking through Appau JSC (as he then was), the court held that:
- “Since the contention of the Respondent was that it was their predecessor who permitted the predecessors of the Appellants to settle on the land for farming and settlement purposes, it could not be said that for all these long years or period of settlement, the Appellants were in adverse possession of the land. In fact, they were in possession with the consent and knowledge of the Respondent’s family without any hostilities, as the Respondent’s testimony showed. The Appellants could not therefore have pleaded the Statute of Limitation because the Respondent never contended that the Appellant’s presence on the land was unknown to his family or was adverse.”
19. See also the following cases **GIHOC Refrigeration Household Products Ltd. v Hanna Assi [2005-2006] SCGLR 458 at 468-469**, **Djin v Musah Baako [2007-2008] SCGLR 686**, **John K. A. Klu v Mavis Darko & Anor. [2009] DLSC2497**, **Antwi v Abbey [2010] SCGLR 17**, **Amidu & Anor. v Alawiye & Ors. [2019] DLSC 6573** and **Binga Dugbartey Sarpur v Ekow Bosomprah [2020] DLSC 9922** on adverse possession.
20. Based on the above authorities, it is therefore clear that a person who has been granted permission to live in the disputed property cannot claim adverse possession to it.
21. In the instant case, the defendants were, therefore, enjoined by law to prove that this present action is statute barred. Defendants’ evidence is that they have lived in the said property for 60years or more without anybody claiming it as a personal property. They added that the plaintiffs have never lived in the disputed house, hence they

cannot make a claim for it and that should there be such claim, plaintiffs' action is statute barred. Plaintiffs, on their part, disputed defendants' assertion. They contended that the defendants have lived in the disputed property with the consent of their father, Seidu Dagomba and upon his death, they defendants or their agents/children continued to live in the property at their permission. They stated that they have ejected some of the family members/tenants, who have willingly left or moved to their own houses, save the 1st defendant and the 2nd defendant's son.

22. From the above, I find that defendants did not lead any sufficient evidence in proof that this action is statute barred. I find that they have lived in the said house at the permission of the late Seidu Dagomba and upon the death of Seidu Dagomba, their continuous stay have been at the instance of the plaintiffs. Therefore, their continuous stay in the disputed house does not inure to them in adverse possession, laches or acquiescence.

Issue b

23. Issue b, *whether or not the disputed house, H/No. I 111, Poloya Fong, Tamale is a family property or a self-acquired property of plaintiffs' father?* The law is also that where plaintiff has endorsed on his writ a claim for declaration of title, recovery of possession and injunction to landed property, he must establish by his root of title and identity or description of the property which he claims. The authorities are legion on this principle: see **Asante-Appiah v Amponsah @ Mansa** [2009] SCGLR 90 @ 98, **Nii Tackie Amoah VI v Nii Amarah Okine & Ors.** [2014] DLSC 2910, **Nene Narh Matti & 2 Ors. v Osei Godwin Teye & Samuel L. Ayortey & 2 Ors. v Osei Godwin Teye (Consolidated)** (2017) Suit No. J4/13/2017, Unreported dated 22/11/17, SC, **Yehans International Ltd. v Martey Tsuru Family & Anor.** [2018] DLSC 2488, just to mention a few. Once there is no dispute as to the identity of the land, what remains is the proof

of title, failing which, the claimant must lose, see **Kodilinye v Odu [1935] 2 WACA 336** and **Anane v. Donkor [1965] GLR 188**. In the case, **Odametey v Clocuh [1989-90] 1 GLR 14, SC** the Supreme Court held that in an action for an interest in land the claimant must succeed on the strength of his own case and not on the weakness of the other's case.

24. The onus, therefore, on the parties on this issue is for the defendants to prove that the property in dispute is a family property or that the plaintiff establishes that the property is a self-acquired property of the late Seidu Dagomba to which same has devolved on them. Either is to succeed on his own case and not on the weakness of the other's case.

25. In the case **Ofori Agyekum v Madam Akua Bio [2016] DLSC 2858**, the Supreme Court speaking through Benin JSC (as he then was) held that it is normal Ghanaian practice for members of an extended family to live in the self-acquired property of a member of the said family. That, however, does not diffuse the title of the owner or convert the property into a family property.

26. From the evidence, defendants only stated that the property was built by the late Dohina Wumbeyili but not Seidu Dagomba. They, however, failed to lead any evidence as to how it was acquired or built it. In fact, 2nd defendant indicated he had no idea as how the property was acquired or built. Defendants also indicated that they have never sighted any document bearing the name of Dohina Wumbeyili concerning the disputed property.

27. The plaintiffs, from the evidence, were able to lead sufficient proof of their claim. According to them the land was the self-acquired property of the late Seidu Dagomba,

per Exhibit A. He built the property. He allowed defendants and their fathers into the said house. According to them, the said Dohina Wumbeyili never lived in the disputed property. After the demise of Seidu Dagomba, the property in dispute devolved on the surviving children. It matters not, whether they had lived there or otherwise. What is essential is that the property was acquired and built by their late father. Defendants, under cross-examination, admitted that per Dagbon Customs and Practices children, particularly the male children, inherit their father. Also, it was 2nd defendant who was refusing to release the deed covering the disputed property until the intervention of Kamina Barracks. I also find that the defendants have lived in the disputed property at the permission of the late Seidu Dagomba. And after his demise, the plaintiffs have allowed defendants, their children or tenants to live there.

28. On the totality of the evidence, I find that plaintiffs have lead sufficient evidence in proof on the balance of probabilities that the disputed property is a self-acquired property of the late Seidu Dagomba to which same has devolved on them.

CONCLUSION

29. In effect, I hereby enter judgment in favour of the plaintiffs as follows:

- a. I declare that H/No. I 111, Poloya Fong, Tamale is the self-acquired property of Seidu Dagomba as per the lease agreement dated 26th October, 1956.
- b. I declare that upon the death of Seidu Dagomba intestate the said house devolved on his personal representatives, who are the plaintiffs herein, under the Dagbon Customs and Practices. Similarly, I declare that upon the grant of the Letters of Administration by the Circuit Court, Tamale, H/No. I 111, Poloya Fong, Tamale became the benefit of the plaintiffs who are the only surviving children of Seidu Dagomba to so administer.

- e. The defendants, their assigns and agents or all persons deriving interest in H/No. I 111, Poloya Fong, Tamale are given three (3) months to move out of the said house. The plaintiffs are, therefore, at liberty to recover of possession of the said property.
- f. The defendants, their assigns, children, agents, workmen and all other persons whatsoever described are perpetually restrained from interfering with plaintiffs' possession, ownership, occupation and usage of H/No. I 111, Poloya Fong, Tamale.
- g. Costs is assessed at GHS3,000.00

H/W D. ANNAN

[MAGISTRATE]

SYLVESTER ISANG ESQ. FOR THE PLAINTIFFS

SHEIKH-ARIF ABDULLAH ESQ. FOR THE DEFENDANTS

References:

1. *ss. 11(4), 12(1) & (2) and 14 of NRCD 323.*
2. *s. 10(1) Of Limitation Act, 1972 (NRCD 54)*
3. *Faibi v State Hotels Corporation [1968] GLR 471*
4. *In re Ashalley Botwe Lands; Adjetey Agbosu & Ors. v. Kotey & Ors. [2003-2004] SCGLR 420*
5. *Ababio v Akwasi III [1995-1996] GBR 774*
6. *Tsuru III v Obodai & Ors. Suit No. H1/228/04, 2008 Unreported*
7. *Alec Grant Sam & Ors. v Unilever Ghana Ltd & Ors. [2016] DLSC 2828*
8. *Bio & Anor. v Adjei & 12 Ors. [2014] DLSC 2874*

9. *Ebenezer Kwaku & Anor. v Mankralo Tetteh Otibu IV* [2021] DLSC 10790
10. *GIHOC Refrigeration Household Products Ltd. v Hanna Assi* [2005-2006] SCGLR 458
11. *Djin v Musah Baako* [2007-2008] SCGLR 686
12. *John K. A. Klu v Mavis Darko & Anor.* [2009] DLSC2497
13. *Antwi v Abbey* [2010] SCGLR 17
14. *Amidu & Anor. v Alawiye & Ors.* [2019] DLSC 6573
15. *Binga Dugbartey Sarpor v Ekow Bosomprah* [2020] DLSC 9922.
16. *Asante-Appiah v Amponsah @ Mansa* [2009] SCGLR 90 @ 98
17. *Nii Tackie Amoah VI v Nii Amarh Okine & Ors.* [2014] DLSC 2910
18. *Nene Narh Matti & 2 Ors. v Osei Godwin Teye & Samuel L. Ayortey & 2 Ors. v Osei Godwin Teye (Consolidated)* (2017) Suit No. J4/13/2017, Unreported dated 22/11/17, SC
19. *Yehans International Ltd. v Martey Tsuru Family & Anor.* [2018] DLSC 2488
20. *Kodilinye v Odu* [1935] 2 WACA 336
21. *Anane v. Donkor* [1965] GLR 188
22. *Odametey v Clocuh* [1989-90] 1 GLR 14, SC
23. *Ofori Agyekum v Madam Akua Bio* [2016] DLSC 2858