

**IN THE DISTRICT COURT HELD AT SOMANYA ON FRIDAY THE 13TH DAY OF
JANUARY, 2023 BEFORE HIS WORSHIP MICHAEL DEREK OCLOO**

SUIT NO. A8/03/2019

THEOPHILUS DJANGMAH

PLAINTIFF

VRS

- 1. PATRICK DJANGMAH**
- 2. BROTHER**
- 3. KORKOR VIDA**
- 4. DORIS KOSI NYARKO**

-

DEFENDANT

PER THEIR ATTORNEY JOHN NARH

PLAINTIFF

-

PRESENT

DEFENDANTS' ATTORNEY

-

PRESENT

JUDGEMENT

This is a part-heard case as such proceedings were typed, corrections in the proceedings were made and adoption of proceedings was effected.

The Plaintiff instituted the instant action jointly and severally against the defendants for the following reliefs:

1. Declaration of title and possession of a single room apartment in a family house No. C1/5 located at Somanya – Sawyer
2. Costs of litigation.

In the Witness Statement of the Plaintiff he stated that he is one of the grandchildren of one Nyumoh Obuter and that Nyumoh Obuter was the one who put up the house in dispute. He added that Nyumoh Obuter has three (3) children with a certain woman namely Kofi Obuter, Dede and Adzo Salomey. Later Nyumoh Obuter married Maa

Yodzo with whom they gave birth to Noah Tetteh Kwashie who was the 4th child of Nyumoh Obuter and the 1st child of Nyumoh Obutei and Maa Yodzo. The said Noah Tetteh Kwashie was the biological father of the Plaintiff. He added that his grandfather Nyumoh Obuter died and was succeeded by the Plaintiff's late father Noah Tetteh Kwashie.

According to the Plaintiff, the 1st Defendant Patrick Djangmah is his step-brother and the 2nd and 3rd Defendant are his relatives but have no common inheritance with him. He added that the 4th Defendant, Doris Kosi Nyarko is his cousin because she (4th Defendant) is the daughter of his (Plaintiff's) aunt by name Dede. The Plaintiff further stated that his father Noah Tetteh Kwashie inherited the room in issue (single room apartment) from his father Nyumoh Obuter but he (Noah Tetteh Kwashie) was not in occupation of same as he was staying in his own apartment at a different location but in the same area. He added that his late father told his (Plaintiff's) aunt by name Gladys Dede Teiko to live in the room in dispute but the defendants who are laying claim to ownership of the room broke into same and blocked the main door with cement blocks and created another door on 17/7/2019 at a time that Gladys Dede Teiko was in occupation of same. The Plaintiff and his uncle by name Michael Quao approached the defendants for amicable settlement of the issue but the defendants did not listen to them and rather gave the said room out to another person to occupy.

In the witness statement of PW1, Cecilia Bruce – Baiden (Mrs.) who is a younger sister of madam Gladys Dede Teiko, she corroborated the evidence of the Plaintiff and added that Gladys Dede Teiko has been in occupation of the said room since the year 1998 and she (Gladys Dede Teiko) was 95 years old at the time of the incident.

PW2 Kwaku Alex Tawiah corroborated the Plaintiff's evidence and added that Gladys Dede Teiko is his mother and concluded that Gladys Dede's personal belongings are in the said room.

The Defendant's Attorney stated that the Plaintiff is an illegitimate son of his (Attorney's) elder brother by name Noah Tetteh Kwashie because the Plaintiff was born out of wed – lock and therefore has no inheritance rights in the Djangma family. He added that throughout the reigns of successive family heads namely, Nene Legba I, Daniel Legba and currently Alfred Djangmah the entrance of the disputed single room has always been inside the main family house. He further stated that the single room in dispute was given to his elder mother to stay in same temporarily by Nene Legba 1

because the said elder mother by name Korkor Yodjo was the eldest woman in the family.

According to the Defendants' Attorney, after the death of Korkor Yodjo the then head of family Daniel Legba took over the disputed single room and after his death the position of head of family shifted to Alfred Djangmah who has since been acting in that capacity. He added that the Plaintiff is not and cannot be the head of family and has no control whatsoever over the family properties of Nene Legba because the Plaintiff was born out of wed-lock.

Furthermore, he stated that after the death of Korkor Yodjo the Plaintiff's father the late Noah Tetteh Kwashe, sealed off the original entrance to the main house without the knowledge and consent of the then head of family by name Daniel Legba and when he was ordered to reverse and rectify same he refused with the reason that the disputed single room is the personal property of his late sister Gladys Dede Teiko, an assertion which is not true.

In conclusion, he stated that the current head of family Alfred Djangmah instructed the defendants to create or bring back the original entrance of the disputed single room which they did.

DW1 Emmanuel Teye Djangmah, in his witness statement corroborated the evidence of the Defendants's Attorney and added that the current family head, Alfred Djangmah is sick and incapacitated.

It is appropriate to state that the Plaintiff filed a motion on notice for amendment in which he amended the residential address of the disputed house containing the disputed room from H/No. C.1/5 to H/No. C 232/4 to fall on line with the same H/No. stated by the defendants for the purposes of consistency and uniformity. He also amended paragraph 2 of his witness statement to read as follows:

"My grandfather Nyumoh Obuter married his wife by name Maa Yodzo who is my grandmother."

The Plaintiff again amended paragraph 3 of his witness statement to read as follows:

"My grandfather Nyumoh Obuter with his only wife Maa Yodzo gave birth to four (4) children namely Kofi Obuter, Dede, Adzo Salomey and my father, Noah Tetteh Kwasi".

The legal issues to be determined by the court are:

1. Whether or not the Plaintiff satisfied the requirements for declaration of title to the land and room in dispute.
2. Whether or not making improvement to a family property converts it into personal property.
3. Whether or not the Plaintiff is entitled to the reliefs he seeks.

The general rule in every civil case, including the instant one, is that the burden of proof rests upon the party, whether Plaintiff or Defendant, who substantially asserts the affirmative of his case. In the case of **LAMPTEY ALIAS NKPA V. FANYIE & OTHERS [1989-90] 1 GLR 286** the Supreme Court held that:

“On general principles it was the duty of a Plaintiff to prove his case. However, when on a particular issue he had led some evidence, then the burden will shift to the Defendant to lead sufficient evidence to tip the scale in his favour.”

The above principle is stated in section 14 of the Evidence Act, 1975 (NRCD 323).

Also in the case of **BANK OF WEST AFRICA LTD. V. ACKUN [1963] 1 GLR 176-182, SC** it was held that:

“The onus of proof in civil cases depends upon the pleadings. The party who in his pleadings raises an issue essential to the success of his case assumes the burden of proof... But the burden frequently shifts, as the case proceeds, from the person on whom it rested at first to his opponent. This occurs whenever a prima facie case has been established on any issue of fact or wherever a rebuttable presumption of law has arisen... The issue must be proved by the party who alleges the affirmative in substance, and not merely the affirmative in form.”

In the cases of **NUKPLORKPO V. AGBEDOTOR [1987-88] 1 GLR 65** and **ASANTE APPIAH V. AMPONSAH [2009] SCGLR 90** it was held that:

“To successfully maintain an action for declaration of title to land, the Plaintiff had to prove with certainty the boundaries of the land claimed, how much he bought the land,

the price that he paid for and documentary proof establishing his title, the Plaintiff must establish by positive evidence the identity and limits of the land he claims.

The Plaintiff failed to prove the above requirements needed for the declaration of title to the land on which the building in dispute is located. He however stated that his grandfather Nyumoh Obuter put up the said building. The 1st Defendant also maintains that the said building belongs to their grandfather Lagba. It is a fundamental principle of law of evidence that a party in any trial, who makes an assertion has a duty imposed upon him by law to persuade the court that his assertion is true. That is to say that a party who makes an assertion must prove same. Section 14 of the Evidence Act, 1975 (NRCD 323) provides as follows:

Except as otherwise provided by law, unless and until it is shifted a party has the burden of persuasion as to each fact the existence or non-existence of which is essential to the claim or defence he is asserting.

The above provision was upheld in the case of **BILSON V. RAWLINGS AND ANOTHER [1993-94] 2 GLR 422** where it was held that:

“the law has always been that he who alleges that certain state of facts exist, must prove it.”

It is the Plaintiff who made the assertion that his grandfather Nyumoh Obuter was the one who put up the building in issue on the land. The burden was therefore upon him to produce sufficient evidence so that on all the evidence a reasonable mind could conclude that the existence of the fact that Nyumoh Obuter put up the building on the land was more probable than its non-existence. The instant case is civil in character as such the standard of proof on the Plaintiff was on a balance of probabilities. The Plaintiff was expected to satisfy this legal requirement and in his attempt to do so he called PW1 Bruce Baiden. When PW1 was cross-examined by the 1st Defendant the following ensued:

Q: Who gave the land to Nyumo Obuter to build that house.

A: My mother told me that Yaa Koryo's father came for the land and told the siblings that whoever can build should build on the land.

The response by PW1 amounts to a hearsay evidence which is inadmissible according to section 117 of the Evidence Act 1975 (NRCD 323). The question was centered on the

land on which the house was built as such PW1 was not totally emphatic as to whether or not the building was put up by Nyumo Obuter however a deduction from the above is indicative of the fact that Nyumo Obuter did not purchase the land in issue. It is therefore appropriate to state that the land on which the house was built is a family land and by extension H/No. C232/4 in which the disputed room is located is also a family house as per paragraph 4 of the Plaintiff's statement of claim and relief (a).

Assuming without admitting that Nyumo Obutei put up the room in dispute then his conduct can be construed as improvements made to a family property. In the case of **AMOYAW V. AMOYAW AND ANOTHER [1999-2000] 2 GLR 124 CA** it was held that:

"Additions made to existing family property did not change the family character of the property".

In the instant case a reliance on the assumption that Nyumo Obuter put up the single room apartment in dispute will mean that the said development or improvement cannot change the family character of the said room. This means that regardless of the improvements made by Nyumo Obuter the room in dispute still remains a family property.

The Plaintiff traced his root of title to the disputed single room apartment by stating that Nyumoh Obuter was succeeded by Kofi Obuter who was also succeeded by the Plaintiff's father Noah Tetteh Kwashie. He added that his father Noah Tetteh Kwashie inherited the single room apartment in dispute from Nyumoh Obuter but he (Noah Tetteh) did not stay in same and rather told Gladys Dede Teiko to live in same. It is however important to consider what transpired when the 1st Defendant cross-examined the Plaintiff as reproduced below:

Q: Did your father share that room (disputed single room apartment) among his properties

A: No, because it does not belong to him

The above is a confirmation of the fact that the disputed single room apartment is not the personal property of the Plaintiff's father and by extension not the personal property of the Plaintiff.

It must be noted that the court is unable to decide on who an illegitimate son is and who qualifies to be a family member as regards the Legba and Maa Koryo family due to the fact that credible evidence was not led to establish the definition of illegitimate persons and qualifications for membership in the two (2) feuding parties. This is because parties failed to state authentic and appropriate customary laws to establish the issues raised. In addition criminal issues emanating from the case should be addressed at the appropriate forum.

It is my finding that the disputed single room apartment is a family property and not the personal property of the Plaintiff as such it is inappropriate for the Plaintiff to seek for declaration of title to same. Also the parties are from a common larger family as such they should use the structures in the family institution to address issues relating to membership and allocation and distribution of property.

The Plaintiff was unable to lead sufficient evidence to discharge the burden of proving his case.

The Defendants led sufficient evidence to tip the scale in their favour.

In the circumstance and on the balance of probabilities I enter judgment in favour of the Defendants.

A cost of GH¢1,500.00 is awarded in favour of the Defendants.

(SGD)

.....
MICHAEL DEREK OCLOO
DISTRICT MAGISTRATE
13TH JANUARY, 2023