

IN THE DISTRICT COURT 2, TAMALE
HELD ON TUESDAY 24TH JANUARY, 2023
BEFORE HIS WORSHIP D. ANNAN ESQ.

SUIT NO. A1/13/22

BETWEEN

SUMAILA IBRAHIM

-

PLAINTIFF

AND

N-YABA ABDULAI

-

DEFENDANT

JUDGMENT

INTRODUCTION

1. This judgment relates to land.
2. The plaintiff in this case is a pensioner whiles the defendant is a sub-chief of Jantong with the title, Yipel-Naa. Both are ordinarily resident in Tamale.
3. On 15th March, 2022 the plaintiff instituted this action against the defendant for a declaration of title of a piece of land known as plot no. 96 Block C, situate and laying at Watterson Residential Area (also known as Jakarayilli), Tamale which plot was

acquired since 1982, damages for trespass, recovery of possession, perpetual injunction against the defendant, his servants/agents/personal representatives from dealing with the said land and costs.

2. The defendant on 11th October, 2022 disputed plaintiff's claim. The respective cases of the parties are detailed below.

PLAINTIFF'S CASE

3. The plaintiff's case is that he acquired the land in dispute in 1982. He later caused a file to be opened at the Lands Commission. He subsequently travelled to Egypt in 1983 and put one Abdulai Alhassan (deceased) as his caretaker. He was in Egypt for 10 years. When he returned in 1993, all attempts to trace the caretaker proved futile. So he conducted a search at the Lands Commission, "on the only vacant piece of land in the area". He later realised that this land had been surreptitiously transferred to one Jacob Nmyeini Mpenbi by a statutory declaration dated 19/2/1991 ostensibly signed by him (plaintiff). Mr. Mpenbi on becoming aware that the transfer was illegal abandoned same. According to plaintiff, few years later he noticed some thatch houses and a container on the plot. He later reported the matter to the Dohi-Naa but defendant herein would threaten him to leave the plot. The matter was again reported to the Kpambegu Naa where it was noted that his allocation paper is dated 1982 while that of the defendant is dated 1996. He indicated that despite this revelation, the chief failed to advise the defendant to vacate the land because the defendant was part of the chief's family. Hence, this present action.
4. In support of his case, plaintiff tendered in evidence the following exhibits:
 - i. Exhibit A – Copy of the allocation paper dated 19/2/1982.
 - ii. Exhibit A1 – Copy of the site plan for plot no. 96.

- iii. Exhibit B – Copy of a statutory declaration by plaintiff purporting to transfer his interest in the said land to Mr. Jacob Nmyeini Mpenbi, dated 19/2/1991.

5. Plaintiff did not call any witness in support of his case.

DEFENDANT'S CASE

6. According to the defendant, the land in dispute is the property of his late elder brother, Adam Mahamudu, who acquired it from Dohi-Naa Iddrisu in 1981. He explained that his late brother became the Kpambegu Naa and during his reign in the 1990, he (the brother) caused trips of sand to be deposited on the said land. In or about 1996, defendant claims he obtained permission from his brother and elders of the family to occupy the said land. Upon granted permission, defendant then allowed one Ayisha (a seamstress and daughter of his late brother) to put up a container on the disputed land to practise her trade. Abiba, the defendant's nephew's wife also put up a structure to sell 'koko' there. This structure was later taken over by Abiba's son, Firdaus, who presently uses it for glass door and window works, as well as carpentry. According to defendant, these activities have been going on for over 26years without any challenge from any person, including the plaintiff. Defendant indicated that late 2021, plaintiff made a claim to the said land as his property and the matter was sent to the Kpambegu Dohi-Naa, Kpambegu Naa and to Dakpema (the head of Kpambegu skin). And in all occasions, plaintiff was unsuccessful in his claim. Defendant stated at paragraph 14 of his witness statement that, "...granted without admission that the said property belongs to the plaintiff, his (plaintiff)sic instant claim is statute barred."
7. Defendant in his evidence tendered the following exhibits:

- i. Exhibit 1 – Copy of the allocation paper granted the defendant.
- ii. Exhibits 2 and 2A– Pictures of a building on the disputed land.

8. Defendant, also, did not call any witness in support of his case.

ISSUES FOR DETERMINATION

9. The issues borne out of the facts are:

- a. Whether or not plaintiff's action is statute barred?*
- b. Whether or not the land in dispute belongs to the plaintiff?*

BURDEN OF PROOF

10. 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.

11. 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**.

12. With regards to what is required of the plaintiff in land cases, 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

13. Issue a, *whether or not plaintiff's action 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."

14. 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.*" 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. See also the case of **Ebenezer Kwaku & Anor. v Mankralo Tetteh Otibu IV [2021] DLSC 10790** on adverse possession.

15. 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, "[a]cts 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."

16. In **GIHOC Refrigeration Household Products Ltd. v Hanna Assi [2005-2006] SCGLR 458 at 468-469** the Supreme Court held that an adverse possessor of land after 12 years limitation gains an enforceable right. Dr. Justice Date-Bah JSC (as he then was) masterly stated the legal position as follows:

“The combination of the extinguishing of the original owner’s rights under section 10(6) of the Limitation Decree, 1972 (NRCD 54), with the barring of action against the adverse possessor under section 10(1), must in logic result in the adverse possessor being construed to have gained a right that is enforceable by action. Otherwise, there would be the risk of “ownerless lands” resulting from a contrary interpretation of section 10(6) of the Limitation Decree. Indeed, there is authority in support of the view that an adverse possessor of land in relation to which the original owner’s rights have been extinguished has rights in relation to which he can sue. *The adverse possessor gains a new estate of his or her own, which is not by transfer from the original owner whose rights have been extinguished by the limitation statute*”. See also **Djin v Musah Baako [2007-2008] SCGLR 686** and **John K. A. Klu v Mavis Darko & Anor. [2009] DLSC2497**.

17. 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.*"

18. In **Alec Grant Sam & Ors. v Unilever Ghana Ltd & Ors. [2016] DLSC 2828**, the Supreme Court puts it simply as:

"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."

19. From the above authorities, it, therefore, means that even where a party has a valid title to a land, he may lose it on grounds of adverse possession, laches or acquiescence.

20. In the instant case, defendant claims adverse possession to the disputed land. He contended that he has been on the land for 26years without any challenge. This puts his possession in or about 1996. He stated that he sought permission from his brother (Adam Mahamudu, the late Kpambegu Naa) and elders of the family to occupy the said land. Upon granted permission, he then allowed one Ayisha (a seamstress and daughter of his late brother) to put up a container on the disputed land. Abiba, his nephew's wife also put up a structure to sell 'koko' on the said land. According to defendant, this structure was later taken over by Abiba's son, Firdaus, who presently uses it for glass door and window works, as well as carpentry, see Exhibits 2 and 2A. Defendant contended that, assuming without admitting that the land in dispute belongs to plaintiff, plaintiff's action is statute barred because he has been in possession of the land for over 12years.

21. When the court drew plaintiff's attention to this legal defence, plaintiff stated that he had knowledge of the structures being on the disputed land in 2001 but failed to question anybody. At paragraph 13, plaintiff stated that "...defendant had used threat of harm to drive me (him) from my (his) plot." The following also ensued when plaintiff was under cross-examination:

"Q: When did you visit the land in dispute after you returned to Ghana?

A: In 2001.

Q: When you went to the land in 2001, did you find any property or structure on it?

A: Yes. There was two muddy/thatch shops and a container.

Q: Did you find out who owned those shops and container?

A: When I made the search, I was told it was the defendant who allowed them there.

Q: Did the owners of the shop and container tell you how long they have been there?

A: They did not.

Q: Did you ask?

A: I did not ask."

22. When plaintiff was cross-examining the defendant, this is what ensued:

“Q: Per your paragraph 10 and 14, I am putting it to you that because I was schooling in BATCO and KNUST that was why I did not ask anybody a question and those properties are not proper structures and they are there illegally?

A: I am telling this court the truth because if you have a plot of land and one day you see a structure on it, you definitely have to make enquiries to ascertain as to who owns it and why the structure is there.

Q: I am putting it to you that the structures there are shed and containers that can be demolished or removed within a second and are illegal on the land?

A: The structure there are not sheds.”

23. On the totality of the evidence, I find that when plaintiff returned sometime in 2001 and noticed the said structures, but he simply failed to assert his claim. According to him, he did not question anybody. Even if he feared for his life, when he stated that the defendant had threatened him with harm, he could have referred the matter to the police or come to court. However, nothing of that sort was done. He simply went to sleep and allowed the actions of the defendant to persist for 20years (from 2001-2021). From the evidence, it was in 2021 that he reported the matter to the chiefs. In all circumstances, plaintiff will be fixed with knowledge of the developments by the defendant. But he chose to stand by waiting, only to come to court 20years later after defendant had constructed on the disputed land, to assert his title. That attitude is what the Limitations Act will not allow.

24. I, therefore, have no hesitation at all in concluding that without any challenge for 20years, the defendant's claim of adverse possession shall prevail against the plaintiff. In effect, the plaintiff loses on claim.

Issue b

25. Issue b, *whether or not the land in dispute belongs to the plaintiff?* With issue a clearly established, it will be a fruitless effort in determining this issue. Thus, even where a determination is made in favour of plaintiff, the grounds of adverse possession will still prevail against him. In effect, issue b is otiose.

CONCLUSION

26. In sum, plaintiff fails in his action. I hereby enter judgment in favour of the defendant. Defendant is advised to regularize his interest, per this judgment. No order as to costs.

H/W D. ANNAN ESQ.

[MAGISTRATE]

PARTIES APPEARED IN PERSON

Reference:

1. ss. 11(4) 12(1) & (2), 14 of the Evidence Act, 1975 (NRCD 323)
2. ss. 10(1) and (6) of the 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. *Odametey v Clocuh* [1989-90] 1 GLR 14, SC.
7. *Kodilinye v Odu* [1935] 2 WACA 336
8. *Binga Dugbartey Sarpur v Ekow Bosomprah* [2020] DLSC 9922
9. *Ebenezer Kwaku & Anor. v Mankralo Tetteh Otibu IV* [2021] DLSC 10790
10. *Antwi v Abbey* [2010] SCGLR 17
11. *GIHOC Refrigeration Household Products Ltd. v Hanna Assi* [2005-2006] SCGLR 458
at 468-469
12. *Djin v Musah Baako* [2007-2008] SCGLR 686
13. *John K. A. Klu v Mavis Darko & Anor.* [2009] DLSC2497
14. *Tsuru III v Obodai & Ors. Suit No. H1/228/04, 2008 Unreported*
15. *Alec Grant Sam & Ors. v Unilever Ghana Ltd & Ors.* [2016] DLSC 2828
16. *Blacks' Law Dictionary, 9th Edition by Brain A. Garner*