

**IN THE DISTRICT COURT, DZODZE HELD ON TUESDAY THE 26<sup>TH</sup> OF APRIL,  
2023 BEFORE HIS WORSHIP NELSON DELASI AWUKU DISTRICT MAGISTRATE.**

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**Case No. B7/55/20**

**THE REPUBLIC**

**VRS**

**FIDELIA FLOVI & ANOTHER**

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**JUDGMENT**

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**PARTIES**

COMPLAINANT ABSENT

ACCUSED PERSON PRESENT

**REPRESENTATION**

CHIEF INSPECTOR HAMID MOHAMMED FOR PROSECUTION ABSENT

**BACKGROUND**

On 11<sup>th</sup> of June,2020, the accused persons were arraigned before this Court on a charge of trespass contrary to section 157 of the Criminal Offences Act, 1960 (Act 29).

**BRIEF FACTS**

The brief facts attached by the prosecution disclosed that the complainant Kwame Flovi is a 54-year-old farmer and a resident of Flovikorpe in Weta whilst the accused persons Fidelia Flovi and Akakpo Tsipote are 59 years and 48 years respectively and residents of Flovikorpe and Morkorpe in Weta.

The facts indicated that the complainant has a vast land at Flovikorpe which he secured judgment over against one Dotse Apetsi and Torgbui Ashiakpor IV.

The prosecution stated that the complainant after the judgment sold a portion of the land to one Mawu Xesumale who immediately caused a trip of sand to be deposited on his purchased land.

The Prosecution that while in his house a day after the sale of the land, the complainant was informed by the buyer that the accused persons had trespassed on to the land he purchased and erected red flags on it.

The Prosecution stated that complainant upon confirmation made a report to the police and the accused persons were arrested.

The Prosecution stated that A1 admitted the offence but stated that the land in issue was her farmland. A2 was stated to have denied the offence and stated further that it was Torgbui Ashiakpor the paramount Chief of Weta who instructed him to tell A1 and family to erect the flags on the land.

Both accused persons were arraigned before the court after investigations for prosecution.

### **THE CASE OF PROSECUTION**

The prosecution relied on the evidence of the complainant as its first witness and the police investigator Theodore Effah Abayie as a second witness.

In addition to their witness statements, cautioned statements and charge statements of the accused persons were tendered in evidence and adopted as Exhibits A, A1, B and B1.

Other documents tendered and adopted in evidence included a photograph of the scene of crime and a copy of the judgment of the court marked Exhibits C and D.

In his evidence in chief PW1 stated that he is the owner of a vast land situated at Flovikorpe in Weta opposite the District Hospital.

PW1 stated that on the 27<sup>th</sup> of February, he sold a portion of the land measuring 100×70 to one Mawu Xesumale.

PW1 stated that after the sale he received a call from the buyer who informed him that some persons have gone to erect poles tied with red pieces of cloth on the land sold to him.

PW1 stated that upon the information received from a certain woman to the effect that A1 and A2 were responsible for the act, his buyer confronted A1 and she disclosed to him that she erected the flags on the land together with A2 upon the permission of Torgbui Ashiakpor IV.

PW1 stated that on the 19<sup>th</sup> of September, 2016 the court gave a judgment in which he was declared as the rightful owner of the land against one Dotse Akpetsi and Torgbui Ashiakpor IV of Weta traditional area who are both currently deceased.

### **CASE OF THE FIRST ACCUSED**

The first accused person stated that the land in dispute is the property of Torgbui Hlorgbe Flovi to whom it was granted by the Torgbui Ashiakpor family of Weta Gborta and after his demised became a property of the Flovi family.

A1 stated that at some point Selina Flovi, a member of the Flovi family commenced a civil action over the land with Torgbui Ashiakpor IV and Hanua Govi Etui at the Aflao Circuit Court but the matter was withdrawn for settlement by Torgbui Atsiflam III and elders of Weta which settlement was declared in favour of the entire Flovi family.

A1 stated that at the time when the the matter was pending settlement, the complainant herein verbally abused and provoked the defendants who severely attacked him and he went to make a complaint with the police which resulted in a criminal case that was arraigned before this court.

A1 stated that the matter which started as a criminal case was later made a civil matter for determination of the ownership of land in the suit entitled Kwami Flovi v Dotsey Apetsi & Torgbui Ashiakpor IV in which judgment was granted against the defendants on 19<sup>th</sup> September, 2016.

A1 stated that whiles the case was on going at the court, the members of the Flovi family contributed finances to support the complainant but he failed to render accounts to them after the judgment was obtained.

A1 stated that not long after the judgment was obtained, they realized that farm lands belonging to Kobla Flovi and Kodzo Flovi had been trespassed upon and a trip of sand deposited on the land by some unknown persons.

A1 stated that she was assisted by A2 to erect the danger flags on the land to cause the person who deposited the sand on the land to show up and the complainant got the police to arrest them.

A1 stated that the complainant had never cultivated the land in issue and that the portion of their family land carved to him for his cultivation is still in his possession and that she only acted to protect her inheritance.

A1 stated that the piece of land in issue is not the property of the complainant but rather a property of the Flovi family based on the judgment obtained by Selina Flovi earlier for and on behalf of the Flovi family.

### **CASE OF THE SECOND ACCUSED**

In his evidence in chief filed on 28<sup>th</sup> October, 2022, the second accused described himself as a descendant of the Akpo Ashiakpor Royal family of Weta and stated further that it is the Akpo Ashiakpor family that gave out the land in issue to Torgbui Hlorgbe Flovi, great grandfather of the complainant.

A2 stated that some members of the Flovi family lodged a complaint with Torgbui Akpo Ashiakpor IV that some unknown person had gone to deposit sand on their inheritance.

A2 stated that since all efforts to get the person responsible proved futile, he was directed by the Torgbui to assist members of the family to erect the flags on the land for the person responsible to show up.

A2 denied removing any corner pillars on the land as alleged and stated further that he did not erect any flags on the land.

### **FACTS**

From the evidence of witnesses for prosecution and the accused, the court finds the following facts;

- a. That the complainant initiated an action as the plaintiff in suit number A1/1/ 15 entitled Kwame Flovi v Dotse Apetsi & Torgbui Ashiakpor.
- b. That this court differently constituted gave its judgment on 19<sup>th</sup> September, 2019 granting the plaintiff's reliefs.
- c. That the complainant on the basis of the court's judgment sold a portion of the land to Mawu Xesumale.
- d. That the said Mawu Xesumale caused a trip of sand to be deposited on the land he purchased from the complainant.
- e. That the sand deposited on the land raised concerns among the Flovi family who claims ownership to the land.
- f. That the complainant is laying claim to ownership of the land by virtue of the judgment in suit number A1/1/15.
- g. The accused persons claim they went to erect the red flags on the land to compel the person who had trespassed on their family land to own up.

### **THE LAW**

#### **Burden of Proof**

In a criminal action the burden of producing evidence when it is on the prosecution as to any fact which is essential to guilt, requires the prosecution to produce sufficient evidence so that on all the evidence a reasonable mind will find the existence of the facts beyond reasonable doubt. *See Section 11(2) of the Evidence Act, 1975 (NRCD 323) and the cases of Kingsley Amankwah (a.k.a Spider) v. The Republic [2021] DLSC10793 at pages 25-26 per Dotse JSC and Frimpong alias Iboman v. The Republic [2012] 1 SCGLR 297.*

In the case of **Ali Yussuf Issa (No.2) v. The Republic [2003-2004] SCGLR 174**, it was held that the burden of proof has two components, the duty to lead evidence on any fact required to be proved and the duty to provide sufficient evidence to persuade a reasonable mind as to the existence of any such fact. **See also Kweku Quaye alias Torgbe vs. The Republic [2021] DLSC10794 at page 9-10 per Prof. Mensa Bonsu, JSC.**

The extent of the onus on the accused on the other hand is provided by section 11(3) of the evidence Act 1975 which states;

*“In a criminal action, the burden of producing evidence, when it is on the accused as to a fact the converse of which is essential to guilt, requires the accused to produce sufficient evidence so that on the totality of the evidence a reasonable mind could have a reasonable doubt as to guilt”. See also the case of COP v. Antwi [1961] GLR 408.*

### **The Law on Trespass**

**Section 157 of the Criminal Offences Act, 1960 (Act 29)** provides that,

*“ A person who*

- a) unlawfully enters in an insulting, annoying or threatening manner on land belonging to or in the possession of any other person; or*
- b) unlawfully enters on land after having been forbidden so to do; or*
- c) unlawfully enters and remains on land after having been required to depart from that land; or*
- d) having lawfully entered on a land, acts in a manner that is insulting, annoying, or threatening; or*
- e) having lawfully entered on a land, remains on that land after having been lawfully required to depart from that land,*

*commits a criminal offence and is liable on the complaint of the owner or occupier of the land, to a fine not exceeding twenty-five penalty units; and the Court may order the removal from the land by force if necessary of a person, an animal, a structure or a thing”.*

### **ANALYSIS AND EVALUATION OF EVIDENCE**

For the purposes of the offence of trespass under section 157 of Act 29, the court is required to satisfy itself that the prosecution has proved the following ingredients;

- i.that the complainant was the owner or occupier of the land and*
- ii.that the accused persons committed any of the acts in section 157 of the Criminal Offences Act, 1960 (Act 29).*

For an accused person to be liable for punishment for trespass, it must be proved that he is neither the owner nor occupier of the land.

Owner and occupier is defined under section 56 of Act 29 to include any tenant or lessee and the attorney or agent of any owner or occupier.

The position of the law is also that, the person who complains that the accused has committed an act of trespass must be either the owner or occupier of the land as defined under section 156 of the Act.

The requirement therefore is that, where the issue as to whether the complainant is an owner or occupier is in issue, that must be determined as a question of fact and if the prosecution does not prove satisfactorily that the complainant is the real owner or occupier of the land, the action must fail.

The claim of the complainant is that the District Court Dzodze, presided over by His Worship Lawrence B. Buer gave judgment in his favour and declared him as the rightful owner of the land in issue against Dotse Apetsi and Torgbui Akpo Ashiakpor IV of Weta Traditional area as the defendants.

A copy of the judgment on which the complainant relied as the basis of his ownership of the land was tendered in evidence by prosecution as Exhibit D.

Exhibit D reveals that the complainant as the plaintiff in the case stated in his pleadings that the land was originally owned by his great grandfather Torgbui Dartey and later devolved onto his grandfather Torgbui Mishiso Eflovi who gave him the land to cultivate and he has been cultivating it for over thirty (30) years.

The complainant further made the argument to support his position in that suit that, in 2009 when Torgbui Ashiakpor IV trespassed onto the land, his sister Selina Flovi litigated with him and the matter was placed before an arbitration panel, which award was published in favour of his sister for the family.

The facts disclose that the land in dispute have in all times remained a property of the Flovi family. This was affirmed at page 10 in the holding of the presiding Magistrate as follows;

*“In this case I find that the plaintiff and his family have been in long undisturbed possession of the land in issue, a fact which the defendants herein could not dispute”.*

With the confirmation that some members of the family earlier acted and secured an arbitration award in favour of the Flovi family, the complainant could not have claimed exclusive ownership even if it is the case that he solely pursued the civil case as a principal member of the family.

The nature of the land as a family land cannot change merely because he initiated and pursued the civil case as the plaintiff and any attempts to dispose of portions of the land must be in conformity with the procedure required to dispose of family lands.

In the case of *Kusi & Kusi v Bonsu* [2010] SCGLR 60, it was held that, “if any member of a family uses his or her own funds to recover property lost to the family, the property reverts to its family character; it does not become the individual’s private property. **See also Ansah-Addo and Others v Addo and Another AND Ansah-Addo and Others v Asante (Consolidated)** [1972] GLR 400 and *Manukure and Another v. Aniapam and Others* [1976] 2 GLR 339.

The issues that brought about this case border on a dispute between over ownership and the right of the complainant to solely dispose of the land over which the Flovi family is claiming interest.

In the case of the **Republic v. District Court Grade II, Duayaw Nkwanta; Exparte Nimo** [1974] 1 GLR 136 it was held that, *“If, upon the trial of an offence before a District Court, the Court is of opinion that a bona fide question of title to land is raised it shall discharge the accused”.*

## **CONCLUSION**

The Court on the basis of the above reasoning acquit and discharge the accused persons on the charge brought against them on the basis that the prosecution failed to prove exclusive ownership of the land in favour of the complainant.

NELSON DELASI AWUKU  
MAGISTRATE