

**IN THE DISTRICT COURT, KADJEBI IN THE VOLTA REGION (NOW REFERRED  
TO AS THE OTI REGION) HELD ON WEDNESDAY 15<sup>TH</sup> DAY OF FEBRUARY, 2023  
BEFORE H/W ERIC K. FIAMORDZI ESQ, MAGISTRATE**

**Suit No:** A1/28/2019

**PETER ADUAM** a.k.a REV ADUAM PETER KWAME,  
ADMINISTRATOR OF NANA ADUAM II'S ESTATE  
SUING IN A REPRESENTATIVE CAPACITY ON BEHALF  
OF BENEFICIARIES OF THE SAID ESTATE OF KADJEBI - **PLAINTIFF**

**VS**

**1. MR. KWASI OWUSU JOSEPH**  
**2. PHILIP OWUSU a.k.a KWAME PAPAYE OF ASATO- DEFENDANTS**

**JUDGMENT**

This judgment originates from a writ of summons issued by the plaintiff as required under the District Court Rules, 2009, C.I 59 Order 2 rule 3(6) against the defendants for the following reliefs:

1. Declaration of title of ownership of all that piece or parcel of land situate, lying and being at a place known and called Gyamonome and bounded as follows:
  - a. On the West by the late Opanyin Yaw Ayeh of Asato.
  - b. On the North by the late Opanyin Kwadzo Okata of Asato
  - c. On the East by the late Opanyin Buruh of Goviefe and Opanyin Kwasi Owusu of Asato.
  - d. On the South by Kwakutor Korda, Maame Esi and Opanyin Kwasi Owusu.

2. Recovery of an amount of two hundred Ghana Cedis (GH¢200.00) being cost of a jar of akpeteshie the second defendant hijacked and cash the amount of fourteen thousand Ghana Cedis (GH¢14,000.00) being assorted fourteen (14) lumber trees he (second defendant) defiantly harvested from the said land recently, which one/each cost one thousand Ghana Cedis (GH¢1000.00).
3. Perpetual injunction restraining the defendants, their agents or servants from further entering the said land.
4. Reasonable compensatory damages for waste of time, energy and resources and cost.
5. Any other issues borne by the pleadings.

#### **SUMMARY OF SUBJECT MATTER OF CLAIM**

Plaintiff is a civil servant living at Kadjebi. The defendants are also trader and businessmen living in Accra and Asato respectively. Plaintiff says during the lifetime of his father Nana Aduam II, he owned a piece or parcel of land at Asato- Gyamonome as described supra, which he also inherited from his father, the late Opanyin Yaw Osuoabrobour. Plaintiff says his late father (Nana Aduam II) was in peaceful possession of the said land until his demise in the year 1984. Plaintiff is the administrator of Nana Aduam II's estate. Plaintiff says in December, 2015, he (plaintiff) noticed that the defendants had allegedly sold out his (plaintiff's) father's land as described in the reliefs supra. So, he quickly drove away the vendee/ purchaser from the land and maintained possession thereon. Plaintiff states that in December, 2016, the second defendant hijacked one jar of akpeteshie from the plaintiff's son between Gyamonome and Asato which when he reported the conduct of the second defendant to Kadjebi Police, he (plaintiff) was advised to settle the issue before one Abusuapanyin Lucas Kankam at Asato, as

second defendant claimed to have earlier lodged a complaint on the akpeteshie with him (Nana Kankam). Plaintiff says, he complied with the advice from the police but the second defendant refused to co-operate till the demise of Abusuapanyin Lucas Kankam. Plaintiff avers that, second defendant recently felled and sawn fourteen (14) assorted lumber (trees) in the said land hence this action. Wherefore plaintiff claims as per the endorsement on his writ of summons.

The plaintiff attached and filed a statement of claim exhibit PL1, Letters of Administration (not with will annexed, and a hand written sketch (Exhibit PL2) not drawn to any scale to the writ of summons.

The defendants were seen and served. When the plea of the defendants were taken in court, they both pleaded not liable to all the reliefs of the plaintiff.

The court ordered the parties to file pleadings and their witness's statements and any other relevant documents in relation to the subject matter.

On the 28<sup>th</sup> day of May, 2019, the first defendant applied to the court for his name to be amended to read Joseph Kwasi Owusu (and not Kwasi Osusu Joseph as used by the plaintiff in filing the writ). The application was granted by the court, and the registrar was ordered to effect same as the plaintiff did not object to same.

On the same day (28<sup>th</sup> day of May, 2019) the first defendant challenged the capacity of the plaintiff, stating that he (plaintiff) lacks capacity as there are other administrators of the alleged estate who are alive but not on the side of the plaintiff. The defendants filed a motion on notice with an accompanying affidavit challenging the capacity of the plaintiff. The plaintiff responded that he had been short served. As such the matter was adjourned for the issue of capacity to be dealt with.

The plaintiff filed an affidavit in opposition to the motion which he captioned, (response to motion and joint affidavit in support by the defendants).

The court did not uphold or overrule the motion filed and the affidavit in opposition because, there were procedural errors detected with the processes. The defendants did not also move the motion.

On the 29<sup>th</sup> day of August, 2019, plaintiff was heard on oath with his evidence in chief. He (plaintiff) relied on the witness statement he filed, and the statement of claim to make his case.

The defendants were permitted to cross examine him.

The plaintiff called and relied on five (5) witnesses to make his case.

The defendants were also made to cross examine all the witnesses of the plaintiff.

When the plaintiff closed his case, the defendants were called upon to open their defence and they did. The plaintiff was also permitted to cross examine the defendants.

The defendants relied on one witness to make their case. Again, the plaintiff was made to cross examine the witness of the defendants.

The issues for the determination of the court are whether or not:

1. Ownership of all that piece or parcel of land situate and lying/ being at a place known and called Gyamonome and described supra by the plaintiff should be declared in his name.
2. The plaintiff is to recover an amount of two hundred Ghana Cedis (GH¢200.00) being the cost of a jar of akpeteshie the second defendant hijacked and the fourteen thousand Ghana Cedis (GH¢14,000.00).

3. The defendants, their agents or servants are to be enjoined perpetually from entering the said land.
4. Reasonable compensatory damages should be awarded in favour of the plaintiff for waste of time, energy and resources and cost.
5. Any other issues are borne by the pleadings.

On the face of the records, the defendants filed a motion on notice with an accompanying affidavit for an order of the court striking out the plaintiff's (Respondent's) action pending before this court and dated on the 07<sup>th</sup> day of May, 2019 on grounds of capacity.

The plaintiff filed a response to the motion and joint affidavit in support by the defendants. He noted that Baafour Aduam I is the same person known as Peter Aduam and currently known as Rev. Aduam Peter Kwame. As such he (Rev. Aduam Peter Kwame) has sued the defendants in a representative capacity on behalf of all beneficiaries including Rose Bekoe, of the estate of Nana Aduam II, and therefore, there is no need to bring all the administrators before taking action against any trespasser or anyone who unlawfully attempts to rob them of their treasure, though they may be alive. The plaintiff explained further that he has not ignored Rose Bekoe in initiating the current action, except to say that she (Rose Bekoe) is currently incapacitated and could not even speak.

He implored the court to temper justice with mercy in lieu of the reasons he has recounted/ enumerated in this response, even if the law does not support his current stand.

According to the plaintiff, he has full capacity and blessings of all Nana Aduam II's family to institute the instant action. He therefore implored the court to strike out the motion on notice with its accompanying affidavit filed by the defendants, with punitive cost.

In the course of the hearing, the court moved for a locus in quo to acquaint itself with the situation on the ground. A report has been filed to that effect.

The plaintiff had some issues with the locus report. The concerns have been addressed. The simplest reason is that the court does not visit locus to take evidence but to take note of how things are in order to preserve the status quo ante. Evidence is taken on oath in the court room.

In the case of Tetteh V Hayford [2013] 43 MLRG at 85, Sophia A. B. Akuffo J.S.C (as she then was) stated:

*“...to succeed in an action for a declaration of title to land, a party must adduce evidence to prove and establish the identity of the land in respect of which he claimed a declaration of title”.*

The address filed by the plaintiff and to which the defendants have responded is of interest to this court. Magistrates and judges sit to hear cases and determine them on merit. They have procedures, laws and ethics to follow. So, as referees, they are supposed to be in charge of their courts so that parties and their witnesses would not go on a frolic of their own.

Often times, some parties rather than focus on their cases, try to draw the judges and magistrates into the arena of conflict.

In the instant suit, particularly in the address filed by the plaintiff, as well as the summary of the subject matter of claim, mention has been made of one Yaw Osuoabrobour. Then in the statement of claim filed by the plaintiff on the 1<sup>st</sup> day of March, 2019, paragraph 7, 10, and 14, the name Yaw Osuoabrobour has been mentioned once again, and at many others.

Under the following cross examination by the first defendant on the plaintiff, the name Yaw Osuoabrobour was implied here.

Q: Who gave you the property to take care of? Was it your father or your grandfather?

A: My father succeeded/ inherited same from his late father. So, it is a family property that I have inherited through my father.

Q: Who was he sharing the food crops with?

A: He shared same with my grandfather and later my father.

So, the court has never and would never gag any party or witness in its bid to deliver well-reasoned judgements as anyone would like to create such an impression. The issue before this court is not over Osuoabrobour, Ntomire, Janet Asiedua, the magistrate/ court, or another separate land elsewhere. It is about justice delivery and the real owner of the subject matter in issue.

In one breath, the plaintiff alleged that, the defendants sold portion of the entire Obuoabrobour (I believe he was referring to Osuoabrobour and Nana Aduam II's land as described in the writ herein, but in another breath, he alleged that, "it was the late Opanyin Akunor Yaw who was cultivating it jointly with Opanyin Sekye Ama (Sekyeama). It was later shared between my father and Opanyin Sekye Ama and Opanyin Akunor Yaw. So, my father pledged his portion that he took together with his sisters to your father..." Was it a verbal or written contract? Who were there to witness that? Besides these, the plaintiff in his statement of claim filed has conflicting evidence and statements there (especially paragraphs 10, 11, and 12).

Meanwhile, none of the reliefs of the plaintiff has anything to do with the recovery of a pledge by any of his ancestors to the Defendants, or their ancestors. Perhaps, the plaintiff

is hiding behind his relief 5 to shield him. He (plaintiff) has not filed for recovery of possession of any such property. Everybody who appears before the court have to be focused on why they are there.

The plaintiff in his letter dated, 11<sup>th</sup> day of January, 2019 and which has been filed on the 13<sup>th</sup> day of May, 2020, lines 2 and 3 of paragraph I, stated: *“my grandfather the late Osuoabrobour offered your late grandfather, which the late Amo Nseboah attested to sometime ago before you, Okyeame Asamoah and others...”*

The plaintiff with the greatest respect to his person, appears to be a pathological litigant who is vested with lots of antics where he aprobrates and reprobates, but lacks focus. Although he (plaintiff) has filed a lot of exhibits, he has been unable to rely on them. So, as a court, I would not put much weight on such exhibits.

On the issue of capacity as raised by the defendants, the plaintiff has more than enough capacity in that regard. I believe the defendants might have realized same and that might be the reason why they shot their own application in the leg.

In the case of the Republic V High Court, Accra, ex parte Aryeetey (Ankra Interested Party) [2003-2004] SCGLR 398, Cecilia H. Sowah, JA. Recounted: *Capacity is a point of law which is very fundamental and goes to the root of the action. Lack of capacity to sue would render the writ and subsequent proceedings null and void”.*

Once the plaintiff has the capacity to sue as an administrator of the estate of his late/deceased father/ relative and in a representative capacity, he has the burden of persuasion to convince the court that indeed the subject matter for which he is before the court, truly belongs to him and his relatives.

In the classic case of, in Re Ashaley Botwe Lands, Adjetey Agbosu & ors V Kotey & ors. [2003-2004] SCGLR, 420, 425-426, Brobbey J.S.C (as he then was) summed up the principle



in the Evidence Act, 1975, NRCD 323 as follows: *“... a litigant who is a defendant in a civil suit/ matter does not need to prove anything; the plaintiff who took the defendant to court has to prove what he claims he is entitled to from the defendant. At the same time, if the court has to make any determination of a fact, or of an issue, and that determination depends on evaluation of facts and evidence, the defendant must realize that the determination cannot be made on nothing... If the defendant leads no such facts or evidence that will induce the determination to be made in his/ her favour, the court will be left with no choice but to evaluate the entire case on the basis of the evidence before the court which may be the only evidence of the plaintiff”.*

In the instant suit, it is the case of the defendants that they inherited/ succeeded the now disputed land from their ancestors and have been in possession and occupation of same without paying tolls or royalties to anyone.

The following are excerpts from some of plaintiff's own witnesses, by the defendants herein, and plaintiff himself.

Cross examination of PW3 by first defendant dated 28<sup>th</sup> day of July, 2020 Okata Baah (who is a boundary owner described by plaintiff).

Q: Are you here to testify that the disputed land belongs to the plaintiff?

A: No, I am not here to say the land belongs to the plaintiff.

Q: Are you aware that my mother hails from Akwamu- Ayensu in the Eastern Region of Ghana?

A: Yes, that is so.

Q: Are you aware that Opanyin Sekyiama (Sekye Ama) is my maternal uncle?

A: I don't know the man. So I am not aware of that.

Q: I am putting it to you that the now disputed land was given by my father, Patrick Kwesi Owusu to Opanyin Kofi Kumah from Akwamu Ayensu in the Eastern Region of Ghana.

A: I don't know anything about that. I only know that Opanyin Kwadwo Abotsi was working on the now disputed land.

Q: Was Opanyin Kwadwo Abotsi a tenant to the plaintiff/ relatives.

A: That much I don't know

Cross examination by first defendant on plaintiff.

Q: Why are you claiming only the middle of the entire vast tract of land?

A by Plaintiff: Because, it is truly mine. It shares boundary on the West by Opanyin Yaw Ayeh, On the North by Opanyin Kwadwo Okata, On the East by Opanyin Bruh, Opanyin Kordar and Opanyin Kwasi Owusu, Kordar and Maame Esi.

Q: Do you know the one who granted the land to Maame Esi?

A: Yes, Opanyin Abenei.

Q: I'm putting it to you that my grandfather Kwasi Owusu granted the land to his sister Maame Esi and not Opanyin Abenei.

A: That is what I know. But that notwithstanding that land shares a common boundary with my land, which is the subject matter in dispute.

Q: I'm putting it to you that I've been cultivating the disputed land for the past thirty (30) years.

A: That is not correct. You have never farmed there.

Q: Do you know one Basari Kwadwo?

A: Yes, my Lord.

Q: Whose land is Basari Kwadwo cultivating?

A: Basari Kwadwo cultivated part of your land and part of my land. There is a boundary there.

Cross examination of the Pw3 by second defendant

Q: Are you aware that we share a common boundary with you on our land at Dzamlomey/ Dzamonome (which is the now disputed land)?

A: No, I don't know that. I only know that some Akwamus share a common boundary with my father. But I don't know the one who granted the land to those Akwamus.

Q: Do you remember you came to me in my house and told me that someone had uprooted some trees on the boundary between you and I, and you suspected that I was the one who did that?

A: Yes, that is true. You even denied that you were not the one.

Q: Could you remember that I later told you that upon my investigations, it was the plaintiff herein who uprooted the palm trees?

A: Yes, that is so.

Q: You even requested that I should come to you to show me the exact boundary between us and I came with some people and you went and showed the boundary to us?

A: That is not correct.

Q: Do you remember you once showed me our boundaries?

A: Yes, I went with you and some other people to show you the boundary between my father's land and that of where the Akwamus cultivated. I mean to say where Opanyin Kwadwo Abotsi cultivated.

Q: So, it was after the demise of Kwadwo Abotsi that their daughter Ceci Abra succeeded him customarily and continued to cultivate the now disputed land.

A: That is true

Q: If you are alleging that I don't have a land over there, why then did you come and enquired to know from me who went and uprooted palm trees between our boundaries.

A: I know the land belongs to you, but you came to me and requested that I should show you the land. I know we share a common boundary over there and that is why I came and enquired from you.

Q: Once you have agreed that I share a common boundary over there with you, I am done. I have nothing else to say.

One particular witness (Bawa Kwadjo) who filed a witness statement for both plaintiff and the defendants, thumb printed the said witness statement that has no jurat, but signed the other one meant for the defendants. I shall try as a court to dwell on the cross examination by the defendants on this witness (Bawa Kwadjo/ Kwadwo/ Kwadjo Bawa).

Cross examination by first defendant on PW5.

Q: So, how come you are here to testify for the same person today?

A: In fact, I didn't prepare my witness statement. It was the plaintiff who prepared it and asked me to thumb print same.

Q: Who brought you to Dzamonome for the first time?

A: It's your father Kwasi Owusu.

Q: Did you cultivate a cocoa farm or a cocoa farm was given to you to maintain?

A: I was given a cocoa farm to maintain but the farm withered. Your father gave me that farm.

Q: When my father brought you to work on his farm, was there any farm cottage?

A: Yes, there was a farm cottage.

Q: The maize that the plaintiff herein has gone to harvest, on whose land was the maize cultivated?

A: That portion of the land belongs to you.

Cross examination by the second defendant on PW5.

Q: How long ago have you been working on my grandfather's land?

A: About thirty (30) years now.

Q: How long ago have you been working on plaintiff's father's land?

A: About thirty (30) years ago, just when I started work on your land.

All the above evidence and the facts suggests that indeed the plaintiff and the defendant's families have shared a common boundary and have cultivated their various land without any interference from any quarters. So where is the issue of mortgage coming from now.

Some of the witnesses of the plaintiff like Okata Baah, Kwadwo Bawah have all corroborated the evidence of the defendant against the plaintiff, whilst some have corroborated the evidence of the plaintiff.

It is important to note that during the pendency of the matter before this court, the parties have been accusing each other of going onto the subject matter and committing acts amounting to contempt of the orders of the court.

The position of the law, following the classic case of Fofie V Wusu [1992-93] GBR 877 is that, "it is the plaintiff who bears the burden of establishing the identity of the land he is laying claim to. Failure to prove this identity is fatal to a claim for declaration of title. To succeed in an action for declaration of title to land, a party must adduce evidence to prove and establish the identity of the land in respect of which he claimed a declaration of title. See also the case of Sasu V Amoah Sakyi [1987-88] 2GLR 221 Holden 7 per Wuako J.A (as he then was).

From the evidence adduced before the court, the facts and the law, I enter judgement in favour of the defendants against the plaintiff as their (defendant's) evidence is more convincing and the fact that they have discharged any doubts on the preponderance of probabilities that the land, the subject matter in issue belongs to them.

The defendants are therefore to continue to be in possession of the now disputed portion of the land. The plaintiff, his heirs, family members, agents, privies and all those who claim through him are hereby enjoined or restrained from interfering with the quiet enjoyment of the defendants' land for all these years.

I award cost, the amount of five thousand, five hundred and eighty Ghana Cedis (GH¢5,580.00) against the plaintiff in favour of the defendants for initiating this vexatious meritless and unconscionable writ against them (defendants).

H/W ERIC K. FIAMORDZI, ESQ

(MAGISTRATE)

sgd