

**AUGUST
2023**

DISTRICT COURT, TWIFU PRASO

SUIT NO. A1/31/19

**JOHN BOADI PER HIS LAWFUL ATTORNEY MR AMPADU
SAMUEL SUBSTITUTED BY AMPADU SAMUEL**

VS.

- 1. IDDI ASANA**
- 2. KWEKU NII**

JUDGMENT

His Honour Festus Fovi Nukunu
(Additional Magistrate)

Thursday 3rd August, 2023



**IN THE DISTRICT COURT, TWIFU PRASO, SITTING ON THURSDAY THE 3RD
AUGUST, 2023 BEFORE HIS HONOUR FESTUS FOVI NUKUNU, THE
ADDITIONAL MAGISTRATE**

SUIT NO. A1/31/19

**JOHN BOADI PER HIS LAWFUL ATTORNEY)... PLAINTIFF
MR. AMPADU SAMUEL SUBSTITUTED BY
AMPADU SAMUEL**

VS.

**1. IDDI ASANA)... DEFENDANTS
2. KWEKU NII**

JUDGMENT

Plaintiff's claims against the defendants are for the following reliefs.

1. Declaration of title, possession and ownership of all that building plot-measured 80×70 located at Praso Zongo Old Mosque bounded by the properties of Opanin Abu, Kwame Asare and Opanin Alhaji

THE CASE OF THE PLAINTIFF

The plaintiff says he is currently unemployed. His case as stated in his statement of claim is that in 1995, his friend called John Sarbeng gifted the plot of land in dispute to him and that the land is located at Old Mosque at Twifo Prasio and shares boundaries with the building of one Brother Abu to the South, the property of Kwame Asare to the East, the property of Alhaji Iddi to the North and one Alhaji to the West. The plaintiff says the gift was made in the presence of one Maame Adomakoma, the mother of John Sarbeng and that plaintiff provided a bottle of schnapps as aseda. He stated that the gift was made public and libation was later poured with the bottle of schnapps provided by the plaintiff. Plaintiff says in or about 1997 John Sarbeng's mother Adomankoma evinced on intention to sell the gifted property and this came

to the attention of the plaintiff 'mother Maame Ama Nkrumah. Plaintiff contends that Maame Ama Nkrumah drew the attention of plaintiff who decided to contact the said Adomankoma to buy the building plot. Plaintiff says that he gave Twelve Cedis (GH¢12.00) to the said Adomankoma and later gave her Eight Cedis (GH¢8) making a total of Twenty Cedis (GH¢20.00).

According to the plaintiff, his junior brother Samuel Ampadu weed around the plot to prevent encroachment. That in 1991, her sister Margaret Frimpong Manso took over the periodic visit of the plot. Plaintiff states that in 1997, her sister visited the land and realised that some few orange trees on the land and she decided to trace the owner. That her sister contacted the owner of the orange tree Alhaji iddi who told her that she should count the trees and compensate him if she was desirous of constructing on the land. Plaintiff says his children moulded bricks and heaped them on the plot and that no one had made adverse claims on the land. He says later the orange trees on his plot and Iddis's plot were marked 'L'. Plaintiff says he went to 1st defendant in the presence of Kwabena Kwakye and 1st defendant admitted that he knows some of the orange trees were on his land and that she was only identifying the orange trees belonging to her father.

Plaintiff claims he decided to put up a building on the plot and had dug a foundation, erected three courses when 2nd defendant came to inform him that 1st defendant had sold portion with six (6) orange trees to him.

THE CASE OF THE DEFENDANTS

1st defendant says Abaawa Sarah also known as Maame Adomankoma sold the land in dispute to her. She says Abaawa Sarah who was the mother of John Sarbeng died three (3) years ago. 1st defendant says the land sold to her belonged to Abaawa Sarah. She states that Abaawa Sarah gave a parcel of land in 1975 to her father and that it was this portion of land given to Alhaji Iddris that Abaawa sarah sold to her. Plaintiff states that her land shares boundary with the properties of Abaawa Sarah, Nana Sisiri Appau, Mr. Dan (Pentecost Elder) Mallam Awudu (deceased) and Mr. Sumalia (deceased).

She says when she bought the land there were still orange trees on the land. She says immediately she bought the land, she caused the officials of the District Assembly to erect blocks on the four corners of the land.

1st defendant states that in 2001, she procured a site plan and took same to Abaawa Sarah but she directed her to the Nana Sisiri Appau to execute. She states that her land was 80 feet by 120 feet.

1st defendant contends that there was a small portion left after the land had been demarcated and sold to her and that it was that parcel of land Ama Nkrumah allegedly paid GH¢7.00 to Abaawa Sarah and the said portion does not form part of the land sold to her. 1st defendant maintains that she went to Abaawa Sarah with her father and paid GH¢25.00 to her for the plot and that Abaawa Sarah's daughter Adwo Nwotwe was made aware. She says anyone who bought a parcel of land on which her father had cultivated orange had to go to her father and pay for the orange trees. Her case is that neither plaintiff nor any of his siblings went to her father to pay for the orange trees. She says that where the plaintiff dug the soil and mould the bricks does not form part of her land. She states that the blocks erected on the building plot in the form of 'L' had been on the land since 1985. Plaintiff further states that it was recently when the matter went to the police that portion of the letter 'L' blocks at the four corners were tampered with. She denies trespassing into anyone's land.

On his part, the 2nd defendant denies plaintiff's claims. He says when he saw the foundation on the land, he contacted one Samuel Kwasi Oppong who was a witness to the 1st defendant in sales of the land. He says the person assured him that the person who did that was his former wife and that he would talk to her over the portion being trespassed into.

The 2nd defendant says when they went to the police station, plaintiff was asked to produce documents of his alleged plot but he could not.

From the pleadings, the issues for determination are as follows:

1. Whether or not the disputed land was gifted to the plaintiff by John Sarbeng.
2. Whether or not the plaintiff acquired the disputed land from Abaawa Sarah in 1997.
3. Whether or not the 1st defendant acquired the disputed land from Abaawa in 1985.
4. Whether or not plaintiff is entitled to his claim as endorsed on the Writ of Summons.

EVIDENCE OF PLAINTIFF

Before I narrate the evidence of the plaintiff, I must state that plaintiff, John Boadi passed on few months after the writ was issued. Samuel Ampadu who was appointed by the plaintiff as his lawful attorney brought an application to substitute his brother who had passed on. The motion was not moved to substitute the deceased brother. Though the motion was not moved, Samuel Ampadu acted as a substitute for the deceased throughout the trial. This was not challenged by the defendants especially 1st defendant who was represented by the counsel. Clearly defendants were not opposed to the application by Samuel Ampadu to substitute his deceased brother in this suit. In view of this, I am satisfied that Ampadu Samuel has substituted his deceased brother in the instant suit.

According to the plaintiff, he testified that in the year 1995 his brother John Boadi now deceased was negotiating with someone that is Abaawa Sarah's son John Sarbeng for the purchase of a building plot/land. That the land in question shares boundaries with Opanin Kwame Asare, Mr. Abu, Alhaji Iddi and one Alhaji. That his brother was shown the land and that he offered one bottle of schnapps as a stamp and thanked him for offering him a place to build. He testified that the entire amount of GH¢20.00 was paid by him and her mother to Abaawa Sarah. That the payment was made in instalments, the first instalment was made personally to Abaawa Sarah whilst the second instalment was made in the presence of the Adwoa Awotwe who is the daughter of Abaawa Sarah.

Plaintiff further testified that they fixed pegs at the four corners of the land and that they did not see any pillars on the land to signify that it belonged to someone else. That they worked on the land without disturbance from anyone.

According to the plaintiff, when they cleared the land, they realised that there was eight citrus trees on the land and that it belonged to Alhaji iddi. That the said Alhaji Iddi told them to count the trees and paid for them but they told Alhaji Iddi that they were not yet commencing any project on the land. As a result, they did not pay for the trees and the trees remained and withered away. That they have been in occupation for so many years. He stated that the land in question is 80×100. Plaintiff testified that one day his brother Kwabena Kwakye told him someone had gone to fix pillars on the land. He said they enquired from the 1st defendant why he fixed

those pillars on the land and she said the pillars were fixed without her consent. Plaintiff tendered a photocopy of the site plan as **EXHIBIT 'SA 1'**

PLAINTIFF'S 1ST WITNESS

PW1, Kwabena Kwakye said plaintiff' has a parcel of a building plot at Zongo Twifo Praso bounded by the properties of Mr. Abuu, Alhaji iddi, Kwame Asare and Alhaji. That he paid a visit to his mother at Waasa Sarponso and upon his return he saw two pieces of block mounted on the plot. He reported this to plaintiff. According to PW1, he escorted plaintiff' to the 1st defendant who was working on the plot. He said 1st defendant told them the blocks were mounted by her child and that he could develop the land anytime he wished.

The 2nd plaintiff's witness, Margaret Frimpong Manso testified and her evidence is similar to the plaintiff's.

Plaintiff closed his case

EVIDENCE OF 1ST DEFENDANT

1st defendant testified that the land in dispute is located at Twifo Praso Zongo and that the plot is measured 120×80. She further testified that the disputed land shares common boundaries with Abaawa Sarah, Elder Ayipey, Nana Sisiri Apaw, the Tofoe Chief and with lands of Madam Amudu and Mr. Sumalia (Deceased). She said it was recently about 20 years ago after she bought the plot that she got to know that a small portion of land adjoining her land belonged to plaintiff's family.

1st defendant testified that her father acquired a large tract of land from Abaawa Sarah to cultivate citrus on tenancy. She said in 1985 Abaawa Sarah expressed interest in selling the said land into building plots. 1st defendant said she was the first person to have been sold land in that area. She said she caused pillars with concrete blocks to be erected on the land. That she has been in peaceful possession of the land without interference from 1985 till 2014 that she sold it to the 2nd defendant. She said she gave the site plan of the land to the 2nd defendant.

THE 1ST DEFENDANT'S WITNESSES

The first witness was Adwoa Nwotwe @ Hanna Asiama. She testified that the plot in dispute was sold and demarcated to the 1st defendant by her mother now deceased. That it was after 20 years that Ama Nkrumah (deceased), mother of John Boadi (de-

ceased) approached her mother for a building plot. That her mother told plaintiff's mother that she sold several portions of land including 1st defendant's portion and that the remaining portion was a narrow portion adjoining 1st defendant's land.

DW1 said Madam Nkrumah inspected the narrow portion of the land and came back to her mother and paid 7,000.00 old cedis. She said her mother asked Madam Nkrumah to cause her surveyor to erect pillars on the boundaries with the plot of 1st defendant but she never came back to see her mother.

DW1 said neither Madam Nkrumah nor any of her children went to see her mother in respect of the plot that was agreed to be given to Madam Nkrumah.

DW1 further said Madam Nkrumah told one Sakyi to be farming on the narrow building plot. She said the children of Madam Nkrumah later took the land from the Sakyi's wife called Adwoa and dug trenches for foundation of their proposed building and that they encroached unto 1st defendant land. DW1 said the matter went to police station and measurement was taken on the instructions of the police. She said it came out that Madam Nkrumah's children trespassed unto 1st defendant's land and that they were asked to re - fill the trenches of the foundation. She insisted that the disputed land belongs to the 1st defendant.

DW2, Margaret Asiana who was the sister of DW1 also insisted that the disputed land was allocated by her mother to the 1st defendant.

EVIDENCE OF 2ND DEFENDANT

His evidence is that his brother James Ayensu acquired the disputed land from the 1st defendant. He said one man, Mr. Andoh who grew palm seedlings on the land approached to tell him that someone was constructing foundation on the land.

According to the 2nd defendant, he reported the matter to the police. He said the land was measured and the measurement was 120 feet×80 feet which was found to be accurate on his site plan.

BURDEN OF PROOF

The standard of proof in land case is 'preponderance of probabilities' which is defined in Section 12(2) of the Evidence Act, 1971 (NRCD 323) as that degree of certainty of belief in the mind of the tribunal of fact or the court by which it is convinced that the existence of a fact is more probable than its non-existence

In an action for declaration of title, the onus lies on the plaintiff to satisfy the court that he is entitled on the evidence brought by him to a declaration of title. The plaintiff in this case must rely on the strength of his own case and not on the weakness of the defendant's case. If this onus is not discharged, the weakness of the defendant's case will not help him and the proper judgment is for the defendant. See **KODLINYE V. MBABEFO ODU [1935] 2 WACA 336**.

In another case of **Akoto II v. Kavege [1984 -86] 2 GLR 365, CA**, the court held that: *"The suit being one for a declaration of title, the plaintiffs have an onerous burden to discharge. This is trite law and would have necessitated no further comment but for the procedure adopted by the plaintiffs of throwing this burden to the winds. No root of title was disclosed. Neither the tradition of acquisition of an inherited estate nor the incidents of purchase, if acquired by sale, were divulged. No clear and positive acts of unchallenged and sustained possession or of substantial user emerged from the evidence. The boundaries of the land were not established. No boundary neighbours were called to testify to the ownership of the adjoining lands."*

Also in NYIKPLORKPO V AGEBDOTOR [1987 - 88] 1 GLR 165 AT 171, Abban JA (as he then was) held that to succeed in action for the declaration of title to land, injunction, and recovery of possession, the plaintiff must establish by positive evidence the identity and the limits of the land he claims.

From the above stated authorities, a party claiming title to the land in dispute carries the burden of identifying the boundaries of the land in dispute. The party must also show the limits of the land in dispute. The party must also call boundary neighbours to testify to the ownership of the adjoining lands.

I will now consider the issue whether or not the disputed land was gifted to the plaintiff deceased, John Boadi by John Sarbeng.

Plaintiff's attorney testified that in 1995, his brother's (John Boadi) friend called John Sarbeng gifted the disputed land to the plaintiff now deceased. According to the plaintiff's attorney, the gift was made in the presence of one Maame Adomakoma, the mother of John Sarbeng and that plaintiff provided a bottle of schnapps as aseda. That the gift was made public and libation was poured.

Sarbah in his book, Fante Customary Law, 80 – 81 (2d ed., William Clowes & Sons 1904), discussed what constituted a valid customary gift as

“gifts consist in the relinquishment of one’s own rights and the creation of the rights of another, in lands, goods or chattels, which creation is only completed by the acceptance of the offer of the gift by that other. To constitute a valid gift, an intension of giving or passing the property in the thing given to the donee by the donor, who has power to do so is necessary. The giving and acceptance must be provided and evidenced by such delivery or conveyance as the nature of gift demand.”

In the case of **YOGUO VRS AGYEKUM (1966) GLR 482 AT 493-494**, the Supreme Court gave the requirement of a valid customary gift as

“A valid gift, under customary law, is an unequivocal transfer of ownership by the donor to the donee, made with the widest publicity which the circumstances of the case may permit”

For the gift to be valid, the donor must be the owner of the thing being gifted.

From the evidence on record, the plot of land which was alleged to have been gifted to John Boadi deceased did not belong to the supposed donor, John Sarbeng. The evidence shows that the land belonged to Abaawa Sarah alias Adomakoma. The said donor could not have relinquished his interest in the land in dispute which did not belong to him. I therefore hold that the land in issue was not gifted to the plaintiff deceased John Boadi by John Sarbeng.

I will now consider the second and third issues which are whether or not plaintiff (deceased) acquired the disputed land from Abaawa Sarah in 1997, and whether or not 1st defendant acquired the land in dispute from Abaawa Sarah in 1985. According to the plaintiff’s attorney, in 1997, John Sarbeng’s mother Adomankoma had an intention to sell the land in dispute which was gifted to the John Boadi (deceased). He said when this came to their mother’s attention, she drew John Boadi’s attention to it. He said John Boadi went to Maame Adomakoma and paid GHC12.00 to her and later paid GHC8.00 making a total of GHC20.00 for the building plot.

Plaintiff’s case is John Boadi (deceased) went to Maame Adomakoma @ Abaawa Sarah and paid GHC12.00 and later GHC8.00. However, in the cross examination of

plaintiff, he stated that it was her elder sister Margaret Frimpong Manso who bought the land in issue from Abaawa Sarah.

This is an extract of the cross examination of plaintiff by counsel for the 1st defendant:

Q: What is the mode of acquisition of this vast land in issue?

A: My elder sister Margaret Frimpoong Manso.

From the plaintiff's attorney's case in one vein, the land in dispute was acquired by John Boadi now deceased. In another vein, plaintiff' said the land in dispute was acquired by her elder sister Margaret Frimpong Manso. Clearly one land cannot be acquired by two people.

From the plaintiff's case, it is unclear who actually paid for the land in dispute. According to the plaintiff in his evidence in chief, he had this to say *"After showing him the land, my brother offered one bottle of schnapps as a stamp and thanked him (aseda) for offering him a place to build. The entire amount as at 1997 was GHC20.00. The money was paid through me and my mother Maame Ama Nkrumah (deceased) to Abaawa Sarah also of blessed memory."*

From the evidence in chief of Plaintiff, John Boadi did not pay to the land owner that is Sarah Abaawa. The money was paid through plaintiff (substituted) and her mother. But the PW2, Margaret Frimpong Manso stated that she was the one who paid for the land.

This is an extract of the cross- examination of the PW2.

Q: You were not a witness yourself to the purchase of the land in dispute by John Boadi.

A: I don't agree. I paid for the land.

This is another extract of cross- examination of PW2

Q: I will refer to paragraph 13, 14 of your witness statement. It is clear from paragraph 14 that it was your mother who gave GHC8.00 to make a total of GHC20.00.

A: Yes

Q: it means you were not the one who paid the total GHC20.00 since your mother gave GHC8.00 to make it GHC20.00.

A: I gave out GHC20.00.

Q: You claimed you gave GHC12.00. You again claimed you gave GHC20.00

A: My mother sent for the money that is why I said I was the one who paid for the money.

From the cross- examination PW2 claimed she was the one who paid for the land in dispute. In another vein plaintiff's attorney denied his deceased brother John Boadi paid for the land though he and her mother. Clearly it is not clear who actually paid for the land in dispute.

The plaintiff tendered a site plan as **EXHIBIT SA1**. In **EXHIBIT SA1**, the name on the face of the document is Margaret Frimpong Manso. The question is who actually acquired the land in dispute? Is it Margaret Frimpong Manso or the John Boadi now deceased?

There is also inconsistency in the boundary owners of the plaintiff's land. Whilst plaintiff stated the boundary owners as Opanin Abuu, Kwame Alhaji, PW2 stated the boundary owners as Kwame Asare, Abu and Alhaji Iddi. It is clear from the record that plaintiff evidence is inconsistent with his PW2's evidence when it comes to the boundary owners. The plaintiff did not also call any witness from the late Abawaa Sarah's family to confirm John Boadi paid for the land in dispute.

From the numerous inconsistencies in the plaintiff's case I hold that plaintiff has failed to prove on the balance of probabilities that John Boadi now deceased acquired the disputed land from Abaawa Sarah @ Adomakoma

1st defendant on her part said her father acquired a large tract of land from Abaawa Sarah to cultivate citrus as tenancy. She said she bought the disputed land from Abaawa Sarah and that she was the first person to be sold land there. The children of Abaawa Sarah, DW1 and DW2 testified to confirm their mother's grant to the 1st defendant. I find as a fact that the land in dispute was acquired by the 1st defendant from Abaawa Sarah.

I will now consider the issue whether or not plaintiff is entitled to his claim as endorsed on the Writ of Summons. Plaintiff's claim is a declaration of title, possession

and ownership of all that building plot measured 80×70 located at Praso Zongo Old Mosque bounded by the properties of Opanin Abu, Kwame Asare and Opanin Alhaji

In an action for declaration of title, the onus lies on the plaintiff to satisfy the court that he is entitled on the evidence brought by him to a declaration of title. The plaintiff in this case must rely on the strength of his own case and not on the weakness of the defendant's case. If this onus is not discharged, the weakness of the defendant's case will not help him and the proper judgment is for the defendant. See **KODLINYE V. MBABEFO ODU [1935] 2 WACA 336**.

In another case of **AKOTO II V. KAVEGE [1984 -86] 2 GLR 365, CA**, the court held that: *"The suit being one for a declaration of title, the plaintiffs have an onerous burden to discharge. This is trite law and would have necessitated no further comment but for the procedure adopted by the plaintiffs of throwing this burden to the winds. No root of title was disclosed. Neither the tradition of acquisition of an inherited estate nor the incidents of purchase, if acquired by sale, were divulged. No clear and positive acts of unchallenged and sustained possession or of substantial user emerged from the evidence. The boundaries of the land were not established. No boundary neighbours were called to testify to the ownership of the adjoining lands."*

Also in NYIKPLORKPO V AGEBDOTOR [1987 - 88] 1 GLR 165 AT 171, Abban JA (as he then was) held that to succeed in action for the declaration of title to land, injunction, and recovery of possession, the plaintiff must establish by positive evidence the identity and the limits of the land he claims.

From the above stated authorities, a party claiming title to the land in dispute carries the burden of identifying the boundaries of the land in dispute. The party must also show the limits of the land in dispute. The party must also call boundary neighbours to testify to the ownership of the adjoining lands. See the case of **JASS CO LTD & ANOR v. APPAU & ANOR [2009] SCGLR 265 @ 275**.

In the instant case, the plaintiff failed to call the boundary neighbours to testify in support of his case. The site plan i.e. **EXHIBIT SA1** which was tendered by the plaintiff does not also disclose the name of the boundary owners. A carefully examination of **EXHIBIT SA1** revealed that no boundary owner of the land in dispute was captured. The size of the land was also not clearly indicated on it. This takes us to

the size of the land in dispute. Plaintiff stated that the land in dispute is measured 80 ×100. But in the writ of summons, Plaintiff stated that the land in dispute is measured 80 ×70. Clearly, plaintiff could not clearly state the size of the land in dispute.

To my mind, it will be almost impossible to be successful when a party to land case fails to produce boundary owners to testify especially where he was not certain about the size of the land. Here the plaintiff failed to clearly identity the size of the land in dispute. His action must fail.

From the reasoning above and on the balance of probabilities, I dismiss the plaintiff's claims in its entirety. I will award cost of GHC 2,000.00 against the plaintiff.

SGD

**H/H FESTUS FOVI NUKUNU
(ADDITIONAL MAGISTRATE)**