

IN THE DISTRICT COURT HELD AT HALF ASSINI ON THURSDAY THE 16TH DAY OF MARCH, 2023. BEFORE HIS WORSHIP WILLIAM OFORI-ABOAGYE.
-MAGISTRATE-

SUIT NO. A1/13/19

**ABUSUAKPANYINLI ABOLEKEVE
OF MPEASEM**

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PLAINTIFF

VRS

**TANOE
OF MPEASEM**

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DEFENDANT

JUDGEMENT

The Plaintiff herein issued a Writ of Summons against the Defendant on 28-3-19 in this Honorable Court seeking the following reliefs:

- (1) Declaration from the Honorable Court that all lands situate and lying at Mpeasem where Defendant inherited his Nda's coconut farm is part of Mpeasem Ezohile Stool lands.
- (2) Declaration that Defendant is entitled to the coconut farm and not the land.
- (3) Declaration that the Defendant cannot sell Ezohile Stool lands in Mpeasem.
- (4) Perpetual injunction Order restraining the Defendant, his assigns, workmen, etc from demarcating or selling Ezohile Stool lands as building plots.

CASE OF THE PLAINTIFF:

It is the case of the Plaintiff that he is the Head of Family of the Ezohile family of Mpeasem who are the custodian of the Mpeasem Stool land. According to the Plaintiff' the Defendant's uncle Nda was granted a portion of the land for the cultivation of coconuts by Nana Etukwa I.

The said farm which forms part of a larger Mpeasem land was inherited by the Defendant after the death of his uncle Nda. The Defendant is now felling the coconut trees and selling the land as building plots hence the action.

CASE OF THE DEFENDANT:

According to the Defendant his great grandfathers Asomwu Boah and Amonle Ackah cultivated the land about 200 years ago since then the land had been inherited as a family land which he now inherits as the eldest of all the grandchildren and the Adahonle Abusuakpanyinli. That his grandfather gave portions of the land to other farmers on "Abusa" basis and as such the Plaintiff is not entitled to his claim.

EVIDENCE OF THE PLAINTIFF:

The Plaintiff gave both documentary and oral evidence in support of his case. In support of his case the Plaintiff tendered Exhibit 'A' & 'B' Exhibit 'B' was annexed to the Witness Statement of the Plaintiff's Witness John Gbewu. [The Plaintiff stated that he is the Abusuakpanyinli of the Ezohile Family of Mpeasem who are the custodians of all Mpeasem Stool lands. That the disputed land which forms part of the larger Mpeasem land was granted to an uncle of the Defendant Ndah by a predecessor of the Plaintiff, Nana Etukwa I on the basis of gratuitous licence for the cultivation of coconut. Exhibit 'A' was a Judgement of the Judicial Committee of the Western Nzema Traditional Council in a case entitled:

P.W Kwofie and Nana Ellabo Tanoë Miezah

Vrs:

Awuah Akesseh and Nana Etukwa III chief of Mpeasem dated 6/12/1978.

In that Suit the Plaintiffs who were predecessors of the Defendant herein, sued the Defendants therein for the election and installation of a chief at Mpeasem without their consent and also

applied to the High Court, Sekondi for an order of **Mandamus** compelling the Defendants then to remove their stool from Mpeasem, since they the Plaintiffs therein, were the owners of the Mpeasem lands. Both the Mandamus application and the action were adjudged in favour of the Plaintiff herein's predecessors. Thus, they were declared as the owners of Mpeasem Stool lands.

The plaintiff further stated that when the Defendant's uncle, Aboah Ndah died, his family came to the Royal Ezohile family to ask for a place for his burial with a bottle of Schnapps.

The Plaintiff Witness (PW) John Gbemu in his evidence told the court that he took a piece of Swampy forest from one Kwagyane for coconut plantation in 1989. He also said that when the farm became matured, he was summoned by Nana Etukwa V of Mpeasem before the paramount chief at Beyin. It was held that the said Kwagyane did not own the land and therefore the farm was divided into 3 parts and he took two parts with other part to Nana Etukwa V. In effect he affirmed the ownership claims of the Plaintiff. He further attached as Exhibit 'B' a court proceeding leading to a consent Judgement between himself and the Plaintiff when he cleared an additional portion of the land without the Plaintiff's consent. In Plaintiff's Exhibit 'A' and at p.18 he traced the history of Mpeasem through his ancestor Etukwa who left Atwebanso because he had a case with one Ngoa. He sought the permission of Nana Ayebie Amihere chief of Half Assini who then had oversight of the area and he was granted the land and he settled on same and named the place Mempeasem. At page 19 of the same Exhibit 'A' his ancestors successfully fought the people of Enzemetianu who attempted to stop them celebrating Kundum festival at this very court in 1965. The said Exhibit 'B' is entitled as Suit No. A1/12/2009.

Abusuakpanyinli Abolekeve

Vrs:

John Gbemu

DEFENDANT'S EVIDENCE:

On the part of the Defendant, he gave oral evidence in addition to his Witness. The Defendant gave evidence to the effect that his ancestors acquired a virgin forest and put same under coconut plantation. Amoniaka and Asomboia were succeeded by their nephews Aboa Andi, Aboa Kokyeli and Aboa Abeka. He also stated that Aboa Andi and Aboa Kokyeli were twins who gave a portion of their land to Kwadjo Kwadjani who cultivated the land with coconuts. After their deaths, the whole land belonging to his ancestors came into his procession and that the said land was acquired in their virgin state and therefore they are the owners of the same.

Defendant's Witness (DW) also gave evidence to the effect that the land was acquired by the grandfathers of the Defendant Aboa Andi, Aboa Kokyeli and Aboa Abeka and their nephew Kwadjo Kwadjani. That when they acquired the land there was no Stool at Mpeasem, the people of Mpeasem quite recently moved away from Enzemetianu to have their own boundary. Thus in effect the elders of the Defendant did not acquire the land from anyone and the Plaintiff had no land at Mpeasem.

ISSUE:

Whether or not based on the evidence adduced title to the disputed land can be declared in favour of either of the parties.

ANALYSIS OF THE EVIDENCE AND APPLICABLE LAW:

The Plaintiff offered Exhibit 'A' which was a Judgement of the Western Nzema Traditional Council's Judicial Committee dated 6/12/1978. The said Exhibit 'A' involved a Suit by the predecessors of the Defendant herein and the Plaintiff, herein regarding the ownership of land at Mpeasem. That Judgement gave the ownership of the land to the Ezohile family of

Mpeasem. Again, in his Statement of Claim, the Plaintiff told the court that when the Defendant's uncle Aboah Nda died, the Defendant's family came to see his family with a

bottle of Schnapps to ask for a place to bury the deceased. This fact was not controverted by the Defendant either in his Witness Statement or during Cross-examination.

The Defendant in his evidence stated that Aboah Ndah and Aboa Kokyeli cultivated coconut farm and gave portion of the land to Kwadjan. It was this Kwadjan (Kwadjan) who gave a portion of the land to John Gbemu to farm on. When this act of Kwadjan was challenged by the Plaintiff's family, the farm was shared between the Plaintiff's family and PW, John Gbemu. This was not in any way disputed by the said Kwadjan since he knew that he was not the owner of the said land. Furthermore, during Cross-examination of PW, he made it clear that the land of Mpeasem is owned by the chief who comes from the Plaintiff's family. Finally, both the Defendant and his witness were all once elders to the Mpeasem stool but were destooled for laying adverse claims the stool's ownership to Mpeasem lands, even though they both deny same. This fact is borne out of the fact that the Defendant's Witness (DW) was even made to slaughter a sheep to appease the Plaintiff.

This was what ensued during Cross-examination of DW:

Q: "I am putting it to you that you and the Defendant were elders of Mpeasem and you laid claims to some lands which made me to threaten to destooled the two of you. However, you came with some people to beg me for clemency and I made you to slaughter a sheep, is that not so"?

A: "My Lord, I did not beg him. He demanded for the sheep and I gave same to him".

This goes to emphasize the fact that the pair (the Defendant and DW) were destooled due to their adverse claim to the Mpeasem land, as said by the Plaintiff. Under customary law, a person slaughters a sheep to pacify the 'gods' or persons they might have wronged and they do so when they have accepted their wrong doing.

The Supreme Court held that in the case of **RUKAYATU USUMANU V ZONGO NAA KUN-GARI AND 16 OTHERS [2021] DLSC 10171**. “The law is that in an action for declaration of title it is the duty of the Plaintiff to prove his title. She is asserting title to property by her claims, and as such the burden falls on her to produce evidence on the balance of probabilities establishing the following:

- a) Her root of title
- b) Her mode of acquisition and
- c) Various acts of possession”.

The Apex court continued:

“This is the present position and the Supreme Court in several decisions had emphasized these ingredients of proof the law requires from a party who asserts title to landed property. In the case of Mondial Veneer (GL) Ltd V Amuah Gyebu X V [2011] 1 SCGLR 446, the Supreme Court per Gerogina Woode CJ held at page 474 of the report as follows: “In land Litigation even where living witnesses who were directly involved in the transaction under reference are produced in court as witnesses, the law requires a person asserting title and on whom the burden of persuasion falls----- to proof the root of title, mode of acquisition and various acts of possession exercised over the subject matter of litigation”

In the case of **OKENTI BORLEY AND OKONTI BORTEY V HAUSBAWER LTD [2021]** it was held that per **Awuku V Tetteh [2011] 1 SCGLR 366** that in an action for a declaration of title to land, the onus was heavily on the Plaintiff to prove his case; he could not rely on the weakness of the Defendant’s case. For a stool or family to succeed in an action for declaration of title, it must prove its method of acquisition conclusively, either by traditional evidence, or by overt acts of ownership exercised in respect of the land in dispute *Odoi V Hammond [1999] I GLR 375 at 372 C A applied.*

The Plaintiff by his evidence has proved that his ancestors founded the Mpeasem town, by the permission of Nana Ayebie Amihere. This is an indication of his root of title. Again he had successfully defended his title to the Mpeasem lands by the exercise of overt acts such as successfully challenging Kwadjani who was Defendant's predecessor in title when he gave a portion of the land to PW and also fought the adverse claims of one P.W Kwofie and the people of Enzemetianu when they attempted to stop them from celebrating the Kundum festival at Mpeasem as far back as 1965.

The Plaintiff is also required in law to prove clearly the identity of his land. "It is settled and trite law that a person claiming title has to prove:

- i) His root of title,
- ii) Mode of acquisition and
- iii) Various acts of possession exercised over the disputed land."

See Mondial Veneer (Gh) Ltd V Amuah Gyebuxv (2011) 1 SCGLR 466. This can be proved either by traditional evidence or by overt acts of ownership in respect of the disputed land. A party who relies on a derivation title must prove the title of his grantor, **Awuku V Tetteh (12014) I SCGLR 366.** Further, to prove ownership through possession, the possession must be long, peaceful and uninterrupted

See Akoto V. Avege (1984-86) 2 GLR 365, YEHANS INTERNATIONAL LTD V. MARTEY TSURU FAMILY AND ANOR (J4/34/2018) [2018] HASC 91 (24/10/2018)

Pursuant to the leave of this court on 20/09/2019 the Plaintiff filed a Notice of Amendment on 30/09/2019 in which the boundaries of the Plaintiff's land were given to encompass the whole of Mpeasem land-bounded by Anlomatuaape, Enzemetianu, the Atlantic Ocean and on the other side by Join Lagoon. Thus, in clear terms the Plaintiff has shown to the satisfaction of the court his boundaries.

Proof of an averment is on the person who alleges something. Thus, it is incumbent upon the Plaintiff to prove his case by adducing sufficient and relevant evidence in support of his case. The scale will then tilt if after the Plaintiff adducing sufficient evidence in support of his case the Defendant has a case to answer. He will then be called upon to also give evidence enough to unsettle the Plaintiff's proves otherwise a ruling shall be made against him. This is provided for under **Sections 11 and 13 of the Evidence Act of 1975 NRCD 323**. These are all acts that go to affirm the Plaintiff's title in the disputed land.

The Defendant gave only a long line of ancestors by whom he inherited the land in dispute. His Witness also followed a similar path. Apart from denying the Plaintiff's claim he did not show by any other means his actual title to the disputed land. He also failed to disprove the averments in Exhibit 'A' put forward by the Plaintiff. The Defendant in his evidence failed to invite those he claims to share boundaries with who are key witnesses to give evidence to support his case.

DECISION:

Judgement is therefore given in favour of the Plaintiff.

ORDERS:

- 1) Title in the disputed land is hereby declared in favour of the Plaintiff.
- 2) The Defendant is only entitled to the coconut trees on the land.
- 3) The Defendant, his assigns, privies, successors etc. are hereby perpetually ordered to refrain from parceling out as building plots any Mpeasem land for sale.
- 4) Those who have bought land from the Defendant are ordered to attorn tenancy to the Plaintiff.

COSTS:

Based on the time the Plaintiff had spent in court in this action and upon the inconvenience thereby caused him and coupled with his age a cost of GH¢3,000.00 is awarded in favour of the Plaintiff and against the Defendant.

(SGD)

H/W. WILLIAM OFORI-ABOAGYE

(MAGISTRATE)

16/03/2023