

**IN THE DISTRICT COURT '1' AT CAPE COAST ON FRIDAY THE 17TH OF
MARCH 2023 BEFORE HIS HONOUR JAMES K. BOTAH ESQ. SITTING AS
AN ADDITIONAL MAGISTRATE**

SUIT NO. A2/30/2022

GEORGE CRAMER

-PLAINTIFF

VRS

ABASS

-DEFENDANT

Parties

-Present

JUDGMENT

The Plaintiff's claim as endorsed on the writ of summons filed on 3rd September 2021 is for an order directed at the Defendant to vacate Plaintiff's property and demolish all structures erected around the property.

PLAINTIFF'S CASE

The Plaintiff stated in his witness statement that the disputed piece of land was bequeathed to him and his siblings by their late mother, Adjoa Menya and that the Defendant has encroached upon the land by erecting a wooden structure to do his corn milling business on the land in spite of several warnings to the Defendant to stop the encroachment. The Defendant has also erected a bath house on the disputed land.

DEFENDANT'S CASE

The Defendant stated in his witness statement that the disputed land was acquired by his great grandfather Annobil through purchase in 1911 and that his family members have been in possession of the disputed land. According to

Defendant in November 2021 the Plaintiff told him that he has trespassed on his land which is not the case. Defendant told the court that he does not operate a corn mill on the disputed land as alleged by the Plaintiff.

ISSUES FOR DETERMINATION

- (1) Whether or not the disputed portion of the land belongs to the Plaintiff; and
- (2) Whether or not the Plaintiff is entitled to his relief.

In the case of Ago Sai & others v. Kpobi Tetteh Tsuru III (2010) SCGLR 762 at 779 Ansaah JSC held that in an action for declaration of title of land, the burden of proof and persuasion remained on the Plaintiff to prove conclusively that on a balance of probabilities he was entitled to his claim of title. This he could do by proving on the balance of probabilities the essentials of his root of title and method of acquiring title to the area in dispute.

The Plaintiff failed to exhibit a title deed or what is commonly referred to as an Indenture to his witness statement in proof of his title to his land including the disputed land. However, he attached a site plan on his land to the survey instructions that was transmitted to the court appointed surveyor to survey the disputed land on the orders of the court.

The Defendant who claims the disputed parcel of land belongs to his great grandfather, Annobil through purchase failed to also attach to his witness statement any such proof. However, the Defendant also attached a site plan of his land to his survey instructions to the surveyor. A comparison of the Plaintiff's and the Defendant's site plan is relevant in the determination of this case. The

Plaintiff's site plan bears the name of Adjoa Menya as the owner of the parcel of land shown in the site plan.

The Plaintiff's site plan has been endorsed by the surveyor who prepared it i.e I.J.K. Borsah. The Plaintiff's site plan has also been stamped by the Lands Commission, Cape Coast as a certified site plan. However, the Plaintiff's site plan has not been registered or is yet to be registered.

On the other hand, the Defendant's site plan does not show the name of the owner of the land shown on the site plan. The Defendant's site plan has not been signed by a surveyor or certified by the Land Commission.

A site plan is significant in determining land cases because the site plan positively identifies the land in question and raises a higher degree of probability that the land in dispute belongs to the person claiming it. See the case of Edmund Danso v. Moses Adjei [2013] 58 GMJ 71 at 91-92. In Kwabena v. Atuahene [1981] GLR 136 CA the Court of Appeal held that *"Where there was properly oriented site plan drawn to scale which made compass bearings vague and uncertain the court would hold that the Plaintiff had not discharge the onus of proof of his title."*

The above cited case emphasize the legal significance of identifying disputed lands through site plans. See also the case of Nyikplorkpo v. Agbodotor [1987-88] GLR 165.

Having examined the site plan of the parties, I find that the Defendant has no site plan. What he attached to his survey instructions is not genuine and therefore unreliable. The reverse is true for the Plaintiff. His site plan is genuine and reliable.

I have also examined Exhibit "CW" which is the composite plan on the disputed plan tendered into evidence by the court appointed surveyor.

I find from the composite plan that the Defendant's grinding mill and bath house has encroached upon the Plaintiff's portion of the land.

Evaluating the evidence as a whole, I am satisfied that the Plaintiff has succeeded in proving his case on a balance of probabilities.

Accordingly, I hereby enter judgment in favour of the Plaintiff as per his relief endorsed on the writ of summons.

The Defendant is hereby ordered to remove all structures belonging to him from the Plaintiff's land so that Plaintiff can recover vacant possession of the disputed land.

(SGD)

JAMES KOJOH BOTAH ESQ.

(CIRCUIT COURT JUDGE)