

IN THE DISTRICT COURT HELD AT WEIJA ON THURSDAY THE 30TH DAY OF
MARCH 2023 BEFORE HER WORSHIP RUBY NTIRI OPOKU (MRS.), DISTRICT
MAGISTRATE

GW/WI/DG/ A1/30/21

ISAAC KOTEI TAWIAH DJANIE

PLAINTIFF

VRS

1. ASAFOATSE SUGAR

DEFENDANTS

2. VERONICA BAIDOO



II

PARTIES:

PLAINTIFF IS PRESENT

DEFENDANTS ARE ABSENT

JUDGMENT

The plaintiff filed a writ of summons at the registry of this court on 27th September 2021 for the following reliefs;

- a. A declaration that all that parcel of land described herein belongs to the plaintiff;
- b. An order for recovery of possession;
- c. An order for perpetual injunction against the defendants, their assigns, agents, workmen, privies restraining them from selling or mortgaging or clogging the land in any manner whatsoever to third parties until the final determination of this suit;
- d. An order against the defendants to remove the container they have mounted on a portion of plaintiff's land
- e. Costs

PLAINTIFF'S CASE

The plaintiff's case is that he is the beneficial owner of the land the subject matter of this dispute. He avers that after making payment for the land, his grantor Nii Adam Kwatei Quartey, Head and lawful representative of the Adam Kwatei Family of Accra executed a lease dated 10th May 1994 as evidence of the purchase of the land. He avers further that the said lease was granted to him for a term of 99 years subject to the terms of the lease. He adds that he has been in lawful

possession and occupation of the land since 1994 until 2021 when the 1st defendant started encroaching on the land. According to him, 1st defendant has leased plaintiff's land to the 2nd defendant and she has mounted a container on same. Plaintiff says that unless compelled by the court, the defendants will continue in their acts of encroachment and trespass and will deprive plaintiff of his lawfully acquired land.

On 20th April 2022, the 2nd Defendant attended court with her lawyer Godfred Akoto Esq however she has failed to any defence contrary to the orders of the court. On 25th May 2022, Plaintiff and 2nd defendant were referred to the Court Connected ADR for a possible settlement of the dispute however on 20th July 2022, the mediator William Ofori Atta informed the court that even though the plaintiff attended the mediation session, neither 1st defendant nor 2nd defendant attended same. It is worthy of note that though there is proof of service of the writ of summons dated 16th December 2021 and all other processes on the court's docket, for unknown reasons, the 1st defendant failed to attend court or file any defence to the suit. 2nd defendant on the other hand attended three court sessions and without any explanation whatsoever, stopped attending all subsequent hearings in spite of hearing notices served on her.

The court therefore proceeded without the defendants pursuant to Order 25 Rule 1 (2) (a) of the District Court Rules, 2009 (C.I.59) which provides as follows;

"Where an action is called for trial and a party fails to attend the trial, the trial magistrate may where the plaintiff attends and the defendant fails to attend, dismiss the counterclaim if any and allow the plaintiff to prove his claim."

The issue set down for determination by the court is whether or not the plaintiff is the owner of the land, the subject matter of this dispute and if so whether or not he is entitled to recover possession of the land.

Plaintiff's claim was substantially for a declaration of title so the duty was on him to satisfy the court by evidence that ownership of the land in question was vested in him. **BURDEN OF PROOF**

It is trite that in civil cases, proof is by a preponderance of probabilities.

In the case of Ackah v Pergah Transport Ltd [2010] SCGLR 728 at page 736, Sophia Adinyira JSC (as she then was) delivered herself as follows;

"It is a basic principle of law on evidence that a party who bears the burden of proof is to produce the required evidence of the facts in issue that has the quality of credibility short of which his claim may fail."

This position of the law was re-echoed by Benin JSC in the case of *Aryee v Shell Ghana Ltd & Fraga Oil Ltd* [2017-2020] 1 SCGLR 721 at page 733 as follows;

“It must be pointed out that in every civil trial all what the law requires is proof by a preponderance of probabilities. See section 12 of the Evidence Act, 1975 (NRCD 323). The amount of evidence required to sustain the standard of proof would depend on the nature of the issue to be resolved.”

SHIFTING OF THE BURDEN OF PROOF

The burden of proof may shift from the party who bore the primary duty to the other.

Section 14 of the Evidence Act, 1975 (NRCD 323) provides as follows;

Except as otherwise provided, unless and until it is shifted a party has the burden of persuasion as to each fact the existence or non-existence of which is essential to the claim or defence he is asserting.

In the case of *Re Ashalley Botwe Lands; Adjetey Agbosu v Kotey* [2003-2004] SCGLR 420, it was held as follows;

“It is trite learning that by the statutory provisions of the Evidence Decree 1975 (NRCD 323) the burden of producing evidence in a given case is not fixed but shifts from party to party at various stages of the trial depending on the issue(s) asserted.

The plaintiff in support of his claim to ownership of the land tendered a deed of lease dated 10th May 1994 and made between Nii Adam Kwatei Quarthey, Head and lawful representative of the Gbawe Kwatei Family of Accra and Mr. and Mrs. Kotei Djanie of Accra. Same was admitted and marked as Exhibit A.

Plaintiff again tendered a land title certificate with certificate No. GA.35604 Vol. 92 Folio 239 dated 29th July 2011. Same was admitted and marked as Exhibit B. According to plaintiff, when he obtained his land title certificate, his lodgement with the land title registry was published in the National weekly newspaper “The Spectator” and there was no objection from anybody.

He added that for the past 28 years, he has exercised rights of ownership and possession over the land including using part of the land for Apostolic Church activities without any hindrance from any third party or his grantors.

The defendants have not challenged the assertion that the plot of land in dispute belongs to the plaintiff.

The position of the law as stated in *In Re Agbosu v. Kotey* (2006) 2 MLRG 137 is that “where an averment is made that is not challenged, the one making the averment need not lead evidence in proof of it. The rationale for this is simply that no one has an obligation to prove the obvious or what is not challenged.”

I find from the evidence before the court that the plaintiff has succeeded in establishing on the balance of probabilities that he is the owner of the piece or parcel of land in extent 0.05 hectare (0.13 of an acre) more or less being Parcel No. 550 Block 17 section 233 situate at North East Gbawe in the Greater Accra Region of the Republic of Ghana as delineated on Registry Map No. 008/233/1993 in the Land Title Registry.

Having established that plaintiff is the owner of the parcel of land the subject matter of this dispute, I hold that the plaintiff is entitled to recover possession of the said land from the defendants forthwith.

DECISION

Judgment is hereby entered in favour of the plaintiff against the defendants as follows;

The defendants are ordered to vacate from the land the subject matter of this dispute and yield up vacant possession to the plaintiff forthwith.

I assess damages at twenty thousand Ghana cedis (GHC20, 000.00) in favour of the plaintiff against the defendants.

Costs of five thousand Ghana cedis (GHC 5,000.00) is awarded in favour of the plaintiff against the defendants.

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H/W RUBY NTIRI OPOKU (MRS)

(DISTRICT MAGISTRATE)