CORAM: HER WORSHIP MRS ADWOA AKYAAMAA OFOSU, MAGISTRATE, DISTRICT COURT EJISU, ASHANTI REGION ON THE 17TH OF MAY, 2023

SUIT NUMBER A1/55/2022

ABREFI MANSAH	**-**	**PLAINTIFF**
V		
1. KWAME BOBOSE	**-**	**DEFENDANT**
2. ADARKWA		

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TIME: 9:48

PARTIES PRESENT

PARTIES SELF-REPRESENTED

JUDGMENT

The plaintiff sued out from the registry of this court a writ of summons against the defendant dated 22nd August, 2022 on which was indorsed the following reliefs:

1. ***Declaration of title to a two acre farm land which forms part of plaintiff's 8 acre farm land at Kubease, bounded by the properties of Kwame Odumase, Maame Akosua Arko, Nana Bekoe and a river commonly known as Kwaku Forkuo Asuo of which the defendants have trespassed onto same. The two acres unto which the defendants have trespassed onto measures from plaintiff's boundary with Nana Bekoe into plaintiff's farm land***
2. ***Recovery of possession of the said two acre farm land from the defendants.***

3. ***An order for perpetual injunction restraining the defendants, either acting by themselves or through their agents, privies, assigns workers, relatives or whosoever described from interfering with the plaintiff's interest in the said farmland.***
4. ***Costs***

On the return date which was 7th September, 2022, the plaintiff was non-suited against the 2nd defendant and so the 2nd defendant was accordingly struck off the suit. The parties were then referred to ADR to attempt settlement but they were unable to settle. Subsequently on the 18th of October, 2022 the parties were ordered to file pleadings which the parties complied with.

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The plaintiff' case

The plaintiff says she is a farmer and lives at Juaben and she is the bonafide owner of an 8 acre farm land as described above. That the defendants have trespassed onto same and mounted pillars on same. She confronted the defendants and asked them to stop their acts of trespass and remove the pillars. The 2nd defendant then said it was the 1st defendant who sold the 2 acres of farm land to him. She insisted that they should stop their acts of trespass because she had been in possession of the land for the past sixty years without any interference from anybody. The defendants have however failed to pay heed to her warning hence the instant action. It is the plaintiff's case that the subject land was gifted to his grandmother by name Maame Gyamfuaa who was an auntie to her father and her father after cultivating same with the plaintiff's mother for some time, gifted the subject property to her and she has since been in possession.

The defendant's case

The 1st defendant filed his statement of defence on the 21st of November 2022 wherein he denied the claim of the plaintiff. The 1st defendant says that he lives at Kubease in the Ashanti Region. That the said 8 acre farm land was bequeathed

absolutely to the 1st defendant's father, Kwaku Forkuo and grandfather Kwadwo Bekoe by the late chief of Juaben in the year 1960. According to the 1st defendant, this was in consideration of the valuable services rendered by the 1st defendant's father and grandfather to the chief as regards fighting to secure the throne of the chief among other protections provided for the sustainability of the throne.

The 1st defendant continued that after the demise of his grandfather, his father was appointed customary successor and he continued to hold unto peaceful possession and control of the land without any squabbles whatsoever. The 1st defendant says he rightfully entered the land since same devolved on him and his other siblings as beneficial property from their late father and grandfather.

The 1st defendant further says that the plaintiff does not come from the family line of either 1st defendant's father or 1st defendant's grandfather and that she is simply not a family member of the 1st defendant. The 1st defendant in further averment says that the plaintiff removed the pillars he mounted on the land and he reported the matter to the police. At the police station, the plaintiff was directed to go and mount the pillars but she only went to deposit the pillars on the land.

It is the further case of the 1st defendant that after the demise of his father, the plaintiff's father approached his late mother and pleaded for a piece of land to cultivate and upon demand of same yield vacant possession to the 1st defendant's mother which same was granted. The plaintiff's father cultivated palm trees on the said parcel of land and when same were fell, he yielded vacant possession of same to the 1st defendant's mother.

The plaintiff again says that after the death of his parents, the 2 acre land including the other 6 acres which make the 8 acre land belonging to his late father and grandfather devolved on the 1st defendant and his other siblings as a beneficial property and they have held unto peaceful possession and control without any encumbrances until the plaintiff started to make adverse claim to same. It is the case of the 1st defendant that the plaintiff merely claims that her father once cultivated the land and she assumes same to be his father's personal property which thought is false as her father only cultivated the land on temporal basis and

left same as agreed with 1st defendant's mother. The 1st defendant therefore says that the plaintiff is not entitled to her claim.

At the end of the trial the only issue that arose for determination is:

Whether or not the plaintiff is the bonafide owner of the disputed property

It is trite law that a person who asserts the affirmative of his case must prove same. The standard of proof in all civil cases including land matters is proof by a preponderance of probabilities as was laid down by the Supreme Court in the case of **Adwubeng v Domfeh [1996-97] SCGLR 660** thus:

But section 11(2) of NRCD 323 imposed proof beyond reasonable doubt only on prosecutions in criminal actions and in proof of a commission of a crime in any civil or criminal action. While sections 11(4) and 12 of NRCD 323 clearly provide that the standard of proof in all civil actions is proof by a preponderance of probabilities, no exceptions are made. In the light of the NRCD 323 therefore the cases which hold that proof of title to land required proof beyond reasonable doubt no longer represents the state of the law

Thus the plaintiff in the instant case who seeks a declaration of title to the disputed land is required to prove his case by a preponderance of probabilities which is defined in section 12 of the Evidence Act 1975 (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"

This action being an action in which the plaintiff is asserting title to the disputed land, the law requires that she produces persuasive evidence establishing her root of title, her mode of acquisition and overt acts of possession. Thus in **Yehans International Ltd v Martey Tsuru Family and 1 Or [2018] DLSC 2488,** the Supreme Court speaking through Adinyira JSC held thus:

"It is settled that a person claiming title has to prove i) his root of title, ii) mode of acquisition and iii) various acts of possession excercised over the land....This can be proved by either traditional evidence or by overt acts of ownership in respect of the land in dispute. A person who relies on a derivative title must prove the title of his grantor".

(See also the case of **Mondial Veneer (GH) Ltd. V Amuah Gebu XV [2011] SCGLR 466**

On her root of title, it is the plaintiff's case that the said property was gifted to her late father by her late grandmother by name Maame Gyamfuaa who acquired the disputed property about 200 years ago. The plaintiff did not lead any evidence on how her said grandmother as an individual acquired the subject land. The plaintiff further testified that her said grandmother was an auntie to her father but because the said grandmother had no children of her own and in consideration of the services her father rendered to her grandmother, the latter gifted the said property to her Father. Again granted that the plaintiff's grandmother validly acquired the subject land, the plaintiff again failed to prove the alleged gift of the subject land to her father. In **Agyemang (substituted by) Banahene v Anane [2013-2014] 1 SCGLR 241,** it was held that *"where the appellant's title was derivative, he ought to demonstrate that the predecessor in-title held a valid title for if the foundation was tainted, the superstructure was equally tainted"*

In the instant case the plaintiff failed woefully to demonstrate that both her grandmother and her father had a valid title. In effect therefore the plaintiff failed to establish her root of title.

In respect of her mode of acquisition of the subject land, the plaintiff testified that her mother and father cultivated the entire 8 acre land but at a point she told her

parents that she would like to cultivate the said property all by herself. Her parents agreed and subsequently before 1966, her father gifted the said land to her which she also accepted by offering a bottle of schnapps and 3 pounds as thanksgiving.

It is to be noted that in her statement of claim the plaintiff simply states that she is the bonafide owner of the disputed property. However in her evidence in chief, she alleged that the disputed property was gifted to her by her late father. The position of the law is that parties in an action are bound by their pleadings, thus in the case of **Abowaba v Adeshina [1946] 12 WACA 18,** the principle was laid down to the effect that, if a material fact that ought to be pleaded was not pleaded and evidence is led about it at the trial and it is not objected to, the court will consider it in determining the issue in dispute provided that the evidence so led is admissible. See the following case:

- **Akuffo Addo v Catheline [1992] 1 GLR 377**
- **Edward Nasser Co. Ltd v Mcvroom [1996-97] SCGLR 468**
- **In Re Okine(Decd) Dodoo v Okine [2003-2004 SCGLR 582**

This court will thus consider the issue of the gift as evidence was led on it but same was not objected to even though it was not pleaded by the plaintiff.

According to the plaintiff the subject land was gifted to her by his father with the knowledge of her 11 siblings and it was done in the presence of witnesses.

The plaintiff having alleged a gift had the obligation to lead sufficient evidence of the said gift to her by proving the ingredients of a customary gift. The Supreme Court in **Barko v Mustapha [1964] GLR 78,** held among other things that the burden of proof is on an alleged donee to prove the existence of a customary gift. The court outlined the ingredients of a customary gift as follows:

- *Publicity*
- *Acceptance and*
- *Placing the donee in possession*

This standard of ascertaining a customary gift was also applied in **Asare v Kumoji [2000] SCGLR 298 at 302** per Aikins JSC thus:

"With regards to customary gifts inter vivos our courts have stressed that the acceptance of gift especially land must be made by the presentation to the donor of some token acknowledgement and gratitude in the presence of witnesses. There are two ways of making such valid gift. Either by a conveyance where a deed of gift is granted to evidence the transaction or orally where it is governed by customary law".

It is the case of the plaintiff that at the time of the said gift, the 1st defendant's mother Maame Akua Adoma (deceased), Maame Akosua Arko, Akua Dufie (deceased), Kwasi Asokwa (deceased) and Opanin Kwasi Manu (deceased) were all present and witnessed the transaction.

The plaintiff called Maame Akosua Arko a 106 year old woman who she claims was present at the time the subject land was gifted to her as a witness. Even though the said witness testified that she was present at the time the said gift was made, she could not tell the court which other persons were present and what was presented as thanksgiving. The rest of the persons who allegedly witnessed the presentation of the said gift are all deceased.

Furthermore, assuming that the said land belonged to the plaintiff's father, it is strange that he will gift same to one out of his eleven (11) children in the absence of all the other children who can potentially challenge the said gift.

Again, even though the plaintiff claims that the subject land was given to her absolutely by his father before the year 1966, it is her evidence that in 1970, her father permitted the government of Ghana to cultivate cocoa seedlings on the 8 acre land leaving only a portion which was waterlogged not cultivated and so she cultivated palm trees at the water logged area. From this evidence of the plaintiff, assuming without admitting that the disputed land belonged to her father, it is clear that her father still exercised control over the land and this defeats any claim that he gifted the subject land to the plaintiff absolutely as it shows that the plaintiff was never put in possession.

The plaintiff further claims that, from the year 1983, she has granted on temporal basis, portions of the said parcel of land to people to cultivate. The plaintiff mentioned some of the people as Okyeame Nyamaa, Ante Abenaa and Kujo. The plaintiff however did not call any of these persons as witnesses in this case. The plaintiff was thus unable to demonstrate any acts of possession of the land in dispute.

In **Yoguo & Anor v Agyekum & Others [1966] GLR 482,** the Supreme Court had the opportunity to describe a valid customary gift as:

A valid gift, under customary law, is an unequivoval transfer of ownership by the donor to the done, made with the widest publicity which circumstances of the case may permit. For purposes of the required publicity, the gift is made in the presence of independent witnesses, some of whom should be members of the family of the donor who would have succeeded to the property if the donor had died intestate and, also, in the presence of members of the family of the done who also would succeed to the property upon the death of the donee by the presentation of drink or other articles are handed to one of the witnesses preferably a member of the donee's family , who in turn delivers it to one of the witnesses attending on behalf of the donor; libation is then poured declaring the transfer and the witnesses share a portion of the drink or other articles. Another form of publicity is exclusive possession and the exercise of overt acts of ownership by the done after the ceremony

From the above, it is my view that the evidence led by the plaintiff in respect of the gift is most unsatisfactory and does not support any claim of a gift. Furthermore, I find this allegation of a gift as an afterthought because the plaintiff never raised the issue of a gift in her statement of claim.

Aside alleging a gift, the plaintiff tendered a site plan, Exhibit A in evidence in support of her claim of being the bonafide owner of the disputed property. The instant suit was filed in August, 2022 and the said Exhibit A is dated 19th July, 2022. From all indications, the said site plan was procured for the purposes of prosecuting

this action as evidence of the plaintiff's alleged ownership of the subject land. Unfortunately for the plaintiff however, it is trite that a site plan does not convey any interest in land. Exhibit A therefore is not evidence of the plaintiff's ownership of the subject land.

As a general rule, a defendant in a civil matter is not required to prove anything however if he desires a ruling in his favour then he has a duty to help his case. Thus in the case of **In RE: Ashalley Botwe Land v Kotey and others [2003-2004] SCGLR 420** the Supreme Court held that:

"a litigant who is a defendant in a civil case 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 a determination of a fact or of an issue and the determination depends on evaluation of facts and evidence, the defendant must realise that the determination cannot be made on nothing. If the defendant desires the determination to be made in his favour, then he has the duty to help his own cause or case by adducing before the court such facts or evidence that will induce the determination to be made in his favour".

The defendant in the instant case did not counterclaim even though he disputed the plaintiff's claim. The evidence he led in this case was merely a repetition of his averments in his statement of defence on oath and did not establish anything. That would however not inure to the benefit the plaintiff as the onus is on her to prove her positive averments that have been denied.

On the evidence therefore, the plaintiff failed to prove her root of title, mode of acquisition and overt acts of possession which are legally required of a person who seeks a declaration of title to land. I therefore hold that the plaintiff is not the bonafide owner of the subject land and is thus not entitled to a declaration of title to same.

CONCLUSION

In conclusion, the plaintiff's claim fails and same is hereby dismissed. Parties to bear their costs.

ADWOA AKYAAMAA OFOSU (MRS)

DISTRICT MAGISTRATE