IN THE DISTRICT COURT, KADJEBI IN THE OTI REGION OF THE REPUBLIC OF GHANA, HELD ON TUESDAY, 10TH DAY OF JANUARY, 2023

BEFORE H/W ERIC K. FIAMORDZI ESQ, MAGISTRATE

Suit No: A1/18/2021

JOHN KPENU OF POASE CEMENT - PLAINTIFF

V

1. **ARIM YAW**
2. **ADEBAYOR**
3. **NANA KWADWO KRAH ALL OF POASE CEMENT- DEFENDANTS**

JUDGMENT

This judgement is the outcome of a writ of summons issued by the plaintiff against the defendants jointly and severally for the following reliefs:

1. Declaration of title of ownership of all that piece or parcel of land situate at a place known and called Koto Nkwanta and bounded as follows:
   On one side by the Sabram Road measuring six (6) ropes
   On another side by the property of Kwasiga Kanfra measuring six (6) ropes.
   On the third side by Francis Dumasi's property measuring six (6) ropes, and
   On the last side by the property of Quashiga Kanfra measuring six (6) ropes, which was acquired by the plaintiff by means of purchase from one Tokpala, from Ahamansu.
2. General damages for trespass onto Plaintiff's land.
3. Cost of ten thousand Ghana Cedis (Gh₵10,000.00) being cost of economic trees the defendants felled and sawn from the plaintiff's land.
4. Cost

SUMMARY OF THE SUBJECT MATTER OF CLAIM

Plaintiff is a farmer resident at Poase Cement and the owner of all that piece or parcel of land mentioned supra. Defendants are also farmers residing at Koto Nkwanta. Plaintiff says, he acquired a piece of land at a place known and called Koto Nkwanta by means of purchase along the Sabram road. He states that in the early part of the month of January, 2021, he noticed that portions of his land has been cleared out with a bulldozer, and the defendants started winning and heaping of sand from the land, and are constructing building(s) on portions of the land. The plaintiff added that he also noticed that the defendants had felled a number of economic trees, sawn them and kept them in their home/house. When he confronted the defendants, they admitted being responsible for felling of the economic trees on the land, as well as the winning of sand. Plaintiff continued that, he later showed his land receipt(s) to the defendants but they failed or refused to give vacant possession of the land and to render accounts on the proceeds from the said sand winning and the felling and sawning/ sawing of the economic trees on the land, hence this action to seek redress. Wherefore, the plaintiff claims against the defendants as per the reliefs endorsed on the writ of summons.

He later filed a motion on notice with an accompanying affidavit for an interim injunction order by the court restraining the defendants, their laborer's, assigns or privies from entering the disputed land. But the motion was not moved in court. The defendants pleaded not liable to the reliefs of the plaintiff. The court consequently ordered the parties to file their witnesses' statements, and any relevant document(s) in their possession in relation to the subject matter in dispute and they did.

The witnesses' statements and the exhibits filed were swapped between the parties on the 26th day of May, 2021 by an order of the court. On the same day (26/05/2021), the third defendant filed a motion on notice with an accompanying affidavit for an order of the court to be joined as the third defendant. The motion was slated to be moved by the then

applicant on the 14th day of September, 2021. Meanwhile, the plaintiff had started with his evidence in chief on oath, on the 16th day of August, 2021.

On the face of the record, the plaintiff did not file any process contrary to the application of the applicant, as such, the motion was moved and the applicant was joined as the third defendant on the 14th day of September, 2021. The third defendant was consequently ordered to file his witness's statement and any relevant document(s) in relation to the subject matter in issue and he also complied.

The plaintiff relied on his witness statement and the exhibits filed in his evidence in chief on oath. The defendants were made to cross examine the plaintiff and they did.

The plaintiff relied on a witness who also relied on the witness's statement he filed. The defendants again cross examined the plaintiff's witness.

After the close of the case of the plaintiff, the third defendant elected to open the defence for himself and on behalf of the other defendants. He relied mainly on the witness statement he filed on oath, in his evidence in defence.

The plaintiff was also made to cross examine the third defendant, and he did. The defendants also relied on a witness to make their case.

The court visited the land in issue for a locus-in-quo at the behest of the parties after which a report has been filed to that effect.

The issue(s) for the determination of the court is/ are whether or not:

1. A declaration of title and ownership of the land in dispute is to be made in favour of the plaintiff.
2. General damages must be awarded against the defendants in favour of the plaintiff.

3. Special damages of an amount of ten thousand Ghana Cedis (GH₵10,000.00) must be awarded against the defendants for felling economic trees and sawn same from the disputed land, and cost.

On the face of the records, the plaintiff filed an application for an order of the court injuncting the defendants from their acts of changing the nature of the land. He was however unable to move the motion.

The case of the plaintiff is that, he had acquired the now disputed land through purchase from the ancestors of the third defendant. So, he moved into occupation by cultivating the land with food and economic crops.

He (plaintiff) filed and relied on exhibits J.K.1, J.K.2, J.K.3 and some photographs also marked Exhibit J.K.I and J.K.2 to establish his case. He added that, he has been in peaceful possession of the land for over twenty-five (25) years without any hindrances from anybody including the defendants herein.

The plaintiff continued that, at a point in time during his occupation of the land, a portion of it (ie. The land) got burnt by bush fire and he had replanted the destroyed crops on the land. But recently, in the year 2021, he had information that some white men who are contractors working on the Kadjebi-Nkwanta main road were measuring his land in order to win gravel from same. So, he moved and went to one of the white men who told him (plaintiff) that the first defendant made them aware that he (first defendant) is the owner of the land.

Based on that piece of information, he went to the defendants, who denied ever claiming or informing the white men contractors that the land belongs to them (first and second defendant). He therefore implored the first defendant and second defendant to accompany him to the elders and people of Ahamansu, as they (first and second

defendant) stated that, they have not been seeing him (plaintiff) on the land for some time/ period now, so they thought the land belonged to the people of Ahamansu.

The plaintiff concluded that he has taken his land documents to the people of Ahamansu who said it is true that he had purchased the land from his vendor. But he has noticed that the defendants had felled economic trees, and changed the nature of the land, hence he is before the court for redress.

Under cross examination by the first defendant, the plaintiff admitted that he has earlier shown two different documents/ receipts which he has earlier relied on before this court to the defendants to prove his ownership of the now disputed land apart from the fact that he was still in occupation of the land.

He (plaintiff) denied that the first defendant had informed him that it was the chiefs of Ahamansu who gave out the disputed portion of land to the white contractors. He explained that, it was when he visited the disputed land to meet the contractors at the site that the contractors informed him that it was he (first defendant) and second defendant who led them to the chiefs of Ahamansu from where they (defendants) accompanied them to Ho, where official documents were prepared on the land before they (defendants) were paid as owners of the now disputed land.

The plaintiff concluded that the contractors did not inform him about the quantum of the amount of money paid to the defendants.

Under cross examination by the second defendant, plaintiff admitted that the defendants came to see him because he had served a warning letter on the contractors. He added that, on that visit, the chiefs told him that the disputed portion of the land belongs to the Ahamansu stool and that he (plaintiff) could take the matter to any forum of his choice for litigation. The plaintiff admitted that he had another meeting with the first and second defendants and a sub chief from Ahamansu in the room of the first defendant where the

chief advised him (plaintiff) to agree with them to sell the litigated portion of land to them and take the money before he (plaintiff) dies, because they have acknowledged the fact that though the land belongs to him, he was old.

He noted that, he told them (defendants) and the chiefs that they had destroyed all the economic trees that were on the land.

The second defendant sought leave of the court to file some exhibits, but failed to file same although his application was granted.

Under cross examination by the third defendant, the plaintiff told the court that no chief has endorsed/ signed his land receipt after he purchased the land from the vendor, who was popularly known and called "Tokpala", meaning the man who makes mortars and pestles.

The plaintiff added that his vendor also purchased/ acquired the now disputed land from the then paramount chief of Dodi Papase, Nana kwesi Nyarko and his elders. So, he tried to involve the current chiefs of Dodi Papase who even invited the third defendant but he failed to co-operate with them.

He admitted that, he met with the third defendant at Koto-Nkwanta over this matter but denied that the third defendant invited him to his place.

The plaintiff stated in conclusion that the disputed land belongs to him, and not the stool and the people of Ahamansu.

Under cross examination by the third defendant, who elected to cross examine the plaintiff's witness, the witness stated that, it was his elder brother Mathias Tokpala Abotsi who sold the now disputed portion of the land to the plaintiff, on the 13th day of December, 1996.

He denied that the chiefs and people of Ahamansu had reserved that now disputed land for the cultivation of food crops.

The plaintiff's witness concluded that, immediately his brother (Mathias Tokpala Abotsi) acquired the disputed land from one Dumasi of Sovie, he cultivated a cocoa farm on same. So, it was later that Tokpala's son called Torgbe Ziordo IV also divested his interest in the land to the plaintiff.

When the third defendant opened the defence on behalf of himself and other defendants, he was cross examined by the plaintiff.

Under cross examination by the plaintiff, the third defendant said, when the matter came to his notice and he inspected the documents/ exhibits presented by the plaintiff, he realized/ noticed that, the plaintiff's name was not on any of them. So, the plaintiff requested that he (third defendant) should assist him because he is an old man. So he told the plaintiff to come over to Ahamansu and see one Nana Kwaku Osei, the Amankrado of Ahamansu in that regard. But, they waited and waited, yet the plaintiff failed to turn up.

On the 13th day of April, 2022 one Okyeame Kofi Akromah applied viva voce to withdraw the matter for an attempt at an amicable settlement. The parties agreed and the matter was remitted to him for settlement.

However, on the 30th day of May, 2022, Okyeame Kofi Akromah announced to the court that settlement had broken down and that all the parties were adamant. He therefore washed his hands of it, and requested that the matter was continued before the court. The court ordered for the continuation of the matter by the cross examination of the third defendant by the plaintiff.

The third defendant told the court under cross examination by the plaintiff that, the disputed portion of the land and under the Ahamansu stool lands. So, if anyone has ever

sold such a land to the plaintiff or so, it is a stolen land. He added that he has no document on the now disputed land, but knows it is the property of the Ahamansu stool.

He continued that, Tokpala was a farm tenant to Opanyin Koto. So, they cultivated the now disputed portion without paying any tolls or tributes to the Ahamansu stool.

The third defendant continued that, it was only when the Chinese contractors came to work on the now disputed land that the plaintiff surfaced as the owner. He admitted that Tokpala cultivated the land before, but added that he (Tokpala) cultivated the land for sustenance.

He was however silent on the issue of the plaintiff's cultivation of the land without paying any tolls to the Ahamansu stool or anyone from Koto Nkwanta from the year 1996 that he (plaintiff) went into possession and occupation of the disputed land.

The third defendant told the court that if the disputed portion of the land were cultivated with cocoa trees/ farm, some cocoa trees would have been on the land for all to see.

He concluded by maintaining that the Ahamansu stool did not sell any of its land to anybody at the disputed site.

Under cross examination by the plaintiff, the defendant's witness denies telling the plaintiff that the disputed land belongs to him (plaintiff).

The defendant's witness also corroborated the evidence of the third defendant that there is no cocoa tree, and any other cash/ economic crops on the disputed land currently.

He (DW1) admitted that the first defendant and second defendant called him on phone and informed him that the plaintiff is claiming ownership of the land. He however denied that the plaintiff had earlier initiated this civil action against the first and second defendant, where he and the third defendant promised to settle the matter.

The defendants' witness admitted that he has never cultivated the disputed land before. He (DW1) also admitted that he has no document on the now disputed land to show as proof of ownership.

He (DW1) again admitted that the plaintiff showed him and the defendants herein receipts obtained on the now disputed land.

The witness concluded by denying that he went to the chiefs and Okyeame of Dodi Papase to intervene and plead with him (plaintiff) over the land matter.

When the court visited the land for a locus-in-quo, it has been observed that there is some orange, cocoa, palm and other economic trees on a portion of the land. The full report is on the face of the records.

The interpretation Act 1960(C.A.4) describes land to include "any estate, interest or right to or over any land or water". In the case of Dadzie V Kokofu [1961] 1 GLR, 19, the Supreme Court held that ownership of cocoa farms is to be strictly distinguished from ownership of the land on which the farms are.

In the case of Amewoda V Pordier [1967] GLR, 479, it has been held that, "the allodial title in land, could also be vested in families".

In the case of Sasu V Amua Sakyi [1987-88] 2 GLR 221, holden 7 at 241 per Wuaku J.A (as he then was), and the case of Tetteh V Hayford [2013] 43 MLRG at 97-102, the supreme court in quoting from the case of Mrs. Christiana Edith Agyakwa Aboa V Major Keelson Rtd [March 2011] unreported stated:

> "It can be safely concluded that, the principle "nemo dat quod non habet" applies whenever an order of land who had previously owned by him to another person, attempts by a subsequent transaction to convey title to the new person in respect of the same land cannot be valid. This is because an owner of land can only convey

what he owns, and having already divested himself of title, the new occupant of the stool (or the family head) my emphasis cannot revoke what his predecessor(s) had done."

On the face of the records, the Exhibit J.K.I which is the original copy of the land purchase receipt/ agreement was prepared in the year 1978 between one Dumasi and M.K Abotsi in Poase Cement. This exhibit describes the land in dispute.

Then exhibit J.K. 2, which is a sketch of the land, and which was prepared by a licensed letter writer describes Mr. Mathias K. Abotsi as a tenant, whilst Mr. Dumasi executed the land document as the landlord. This document spells out the cash amount, drink and sheep taken by Dumasi from Abotsi. It is not a composite plan from any licensed surveyor.

The exhibit J.K 3 is the deed of sale between the alleged son of Mr. Abotsi, Torgbe Ziordo IV, the vendor and John Kpenu, the purchaser, who is the plaintiff herein in the year 1996, and which also describes the land in dispute.

Assuming without admitting that these documents were not executed well, the law equity would have considered the other area of interest, which is the person(s) in possession and occupation of the land, the subject matter in issue. This is because equity aids the vigilant and not the indolent.

In his evidence in chief and response under cross examination, the plaintiff maintained that he has cultivated cash crops like cola nut trees, cocoa trees, oranges and food crops on the now disputed land, immediately he acquired it from the vendor. At the locus inspection, the first defendant confirmed to the court, in the presence of all the parties that the cola nut trees, cocoa trees, orange trees and other trees seen on the land were cultivated, maintained and being harvested by the plaintiff. In spite of that, the first defendant claimed, the land belongs to him.

Both the first, second and the third defendant (who is a chief from the traditional area) have been unable to produce any such document(s) between them, and or the white/ Chinese contractors to establish/ make their case.

The plaintiff has established that since his occupation and possession of the land, the subject matter in dispute, he (plaintiff) has not paid any tolls to anyone on the land, the subject matter in dispute.

The defendants have not challenged that point made by the plaintiff. Clearly, the third defendant who is making a point that the land is a stool land must have acquiesced. Reference is made to the reported case of Roland Kofi Dwamena V Richard Nortey Otoo [2017] 113 GMJ 46 c.a. See also, the case of Amuzu V Oklikah [1998-99] SCGLR, 141.

In the case of Tetteh V Hayford, [2013] 43 MLRG, 101 per Dotse J.S.C, "By native custom, grant of land implies an undertaking by the grantor to ensure good title to the grantee. It is therefore the responsibility of the grantor where the title of the grantee to the land is challenged, or where the grantee's possession is disturbed to litigate his (the grantor's) title to the land. In other words, to prove that the right, title or interest which he purported to grant was valid".

In the instant suit, the plaintiff's witness who is a relative/ descendant of the vendor of the land to the plaintiff has led evidence to establish that the land was sold to the plaintiff, and not the grandfather of the second defendant and or the first defendant, as they would like the court to believe.

It is not enough for the second defendant and, or the first defendant to mount the witness box and state that, Tokpala gave a portion of his land to their grandfather/ father, Alhaji Yakubu to cultivate food crops. Both the first defendant and the second defendant have failed to convince the court that their grandfather was indeed in occupation and possession of the land, the subject matter in dispute.

It is the case of the first defendant that, all those cultivating Koto-Nkwanta land pay dues to the Ahamansu stool, at the close of every year. He (first defendant) has however failed to establish that he and or Etokpala have ever paid such dues/ tolls to the Ahamansu stool.

On the face of the records, the third defendant filed exhibit NKK1, which is a document originating from the plaintiff to the white/ Chinese contractors as the land owner.

The exhibit NKK2, which has been endorsed by one Nana Kwaku Osei II, as a response to the exhibit NKK1.

In the exhibit NKK2, the chief stated that he has given/ granted the land to the contractors to be used for two years and does not want any interference from the plaintiff and for that matter anyone else.

However, in the motion on notice for joinder with its accompanying affidavit, the third defendant filed the application/ process in his traditional capacity as the Ankobiahene of Ahamansu traditional area.

In paragraph 2 of the affidavit of the third defendant, he stated that, "the facts deposed to are all from my personal knowledge and belief and partly supplied to me by Nana Kweku Osei II, the Amankrado of Ahamansu traditional area.

Paragraph 5 of the same affidavit of the third defendant (Applicant) stated: "that the now disputed land belonged to the Ahamansu stool, and it was the Amankrado who asked the defendants (first and second defendants) to be a caretaker of the disputed land".

In his witness statement filed, the third defendant stated that, himself and other chiefs of Ahamansu gave the now disputed portion to SINIHYDRO construction because, the land belongs to the Ahamansu stool. Both the first defendant and second defendant have not claimed their title from the Ahamansu stool. It is their case that their father/grandfather

was a farm laborer to Koto Amedzro from Peki Blengo. Then he (Alhaji Yakubu) who was their father/ grandfather acquired a piece or parcel of land from Etokpala from Sovie.

Clearly, there are contradictions in the statements of the first defendant and second defendant on one hand, and the third defendant on the other hand.

Once the disputed portion of the land is the same parcel of land that the plaintiff and the defendants are laying claim to on the principle of "nemo dat quod non habet" the plaintiff's claim must succeed on his first relief based on the evidence adduced before the court, the facts and the law.

On the second and third reliefs of the plaintiff, section 17(1) and (2) of the Evidence Act, 1975 NRCD 323 states that, "whatever asserts must prove" in other words, the burden of proving an assertion is on the person who makes the averment. Proof in law means that sufficient evidence must have been led before the court, that is by production of exhibits on the property or chattels concerned as is necessary.

When the court visited the land for locus in quo, no building(s) are on the disputed land as stated in the summary of the subject matter of claim by the plaintiff. Apart from that, the plaintiff has been unable to repeat such an averment on oath, except that there are no trees on a portion of the land (that is both economic and food crops were destroyed on that larger portion of the now disputed land.

In the case of Peter Ankamah V City Investment Company Limited [2013] 43 MLRG per the Supreme Court, the basic rule for the measure of damages has been laid, and that is, the claimant should be restored to his position before the tort was committed. Where the property has been completely destroyed, the measure of loss is the market value of the property at the time of destruction. Damages are also recoverable for the loss of use of property before it is replaced…"

In the instant suit, the plaintiff has alleged that the defendants started winning sand and heaping same from the land. Again, the plaintiff has been unable to lead enough or sufficient evidence to establish his case. At the locus inspection, it has been discovered that portions of the land were prepared and cemented, which portions might not readily be used for the cultivation of both food and cash crops/ trees the defendants felled and sawn from the land.

In referring to the dictum of Lord Denning M.R in SCM V Whittall [1971] A.C 337, as quoted referred to in Ankamah V City Investment Company Ltd (Supra), "when a defendant/ defendants causes physical damage to the person or property of the plaintiff, in such circumstances that the plaintiff is entitled to compensation for the physical damage, then he can claim in addition for economic loss consequent on it. Consequently, I shall not allow reliefs 2 and 3 of the plaintiff's claim to stand. As such, they must fall. In the stead, I shall, as a court award compensation for both trespass and the economic trees felled or destroyed by the defendants on the land.

From the evidence adduced before the court, the facts and the law, I enter judgement in favor of the plaintiff on the first relief. I consequently declare that the land, the subject matter in dispute has been the bona fide property of the plaintiff. As such, the defendants, their heirs, workmen, privies and all other persons claiming through the defendants are restrained and injuncted from interfering with the quiet enjoyment of the land by the plaintiff.

I award compensation of an amount of twenty-eight thousand Ghana Cedis (GH₵28,000.00) against the defendants jointly for trespass onto the plaintiff's land, and thus changing the nature of the land.

I also award cost, the sum of three thousand Ghana Cedis (GH₵3,000.00) against the defendants in favor of the plaintiff herein.

H/W ERIC K. FIAMORDZI

(MAGISTRATE)