

CORAM: HIS WORSHIP MR. MAWUKOENYA NUTEKPOR (DISTRICT MAGISTRATE), SITTING AT THE DISTRICT COURT, BOLGATANGA IN THE UPPER EAST REGION OF GHANA, ON MONDAY, THE 6TH DAY OF NOVEMBER, 2023.

SUIT NO.: UE/BG/DC/A1/1/2024

**ATUUNA JAMES
OF YOROGO-BOLGATANGA**

PLAINTIFF

VRS.

**ATUUNA AMBROSE
OF YOROGO-BOLGATANGA**

DEFENDANT

TIME:08:39 AM

PLAINTIFF PRESENT

DEFFENDANT PRESENT

NO LEGAL REPRESENTATION FOR THE PARTIES

JUDGMENT

Introduction

1. By a Writ of Summons and Particulars of Claim filed on 4th July 2023, the Plaintiff claims against the Defendant as follows:
 - a. An order directed at the defendant not to interfere with plaintiff's portion of land their father shared to them 15 years ago.
 - b. Perpetual injunction restraining the defendant, his agents, workmen and assigns from interfering with Plaintiff's portion of his farm land.

c. Cost.

2. On 26th July 2023, this court in consideration of the relationship between the parties as brothers and their willingness to settle the matter out of court referred the matter to the court connected Alternative Dispute Resolution pursuant to section 72 of the Courts Act, 1993 (Act 459) as amended. The said section provides as follows:

Section 72—Courts to Promote Reconciliation in Civil Cases.

(1) Any court with civil jurisdiction and its officers shall promote reconciliation, encourage and facilitate the settlement of disputes in an amicable manner between and among persons over whom the court has jurisdiction.

(2) When a civil suit or proceeding is pending, any court with jurisdiction in that suit may promote reconciliation among the parties, and encourage and facilitate the amicable settlement of the suit or proceeding.

See also **Order 25 Rule 1 subrules (3) to (8) of the District Court Rules 2009 (C.I 59) as amended by C.I. 134.**

3. Unfortunately, the parties could not resolve this matter out of court and hence the court proceeded to determine the case on its merits.

Plaintiff's Case

4. Plaintiff says their father during his lifetime married two wives, plaintiff's mother being the first wife and the defendant's mother the second wife. Plaintiff says their father before he passed on called on plaintiff and defendant, took them to his farm lands and shared portions of it into two equal parts and said plaintiff, his mother and siblings should take one part and the other part of the farmland for Defendant, his mother and siblings. Plaintiff says he has since been farming on the said land with his mother and his siblings for the past 15 years. Plaintiff says when he went to his portion

of the farmland to plough on 26/05/2023, the Defendant and one of his junior brothers came to stop him from ploughing the land. Plaintiff says he reported the conduct of the defendant to elders of their family and they said the distribution that that was done by their late father cannot be reversed. Plaintiff says again reported defendant to the chief of their community and the chief decided that they should go by the sharing by their late father but the defendant refused. Plaintiff says he went to his farmland on 6th June 2023 to clear some weeds the defendant sent his junior brother to come and stop him from clearing the weeds and that if plaintiff insist on clearing the land and farm on his farmland his life is at stake. Plaintiff says unless restrained by this court defendant will not stop harassing and intimidating him from farming on his portion of the farmland.

Defendant's Case

5. Defendant says plaintiff is his junior brother and lives in one house at Yorogo-Bolgatanga. That his father during his lifetime married two wives defendant mother being the younger wife while plaintiff mother is the senior wife. Defendant says he is the elder son among the five children of their father. Defendant says it is true that their father shard his portions of land to their mother's and later said if he dies all his land including his properties be shared among the five children. Defendant says their father even bought a land around Veja junction and was preparing documents on it and later fell sick and passed on. Defendant says plaintiff and his junior brother later changed the name of their father to their names without the knowledge of defendant and as at now whether they have disposed of the land to someone else or not he cannot tell. Defendant says that their father shared his rice farm land among his five children and added that if he dies the portion of land lying in front of their house should be shared among the same five children by the elders of their family. Defendant says when their father died two years ago and his final funeral rites performed defendant suggested to plaintiff that the portions of land of their late father be shared among the five of them and supervised by their uncle call Akugre Atuuna who is DW1 and

plaintiff refused. Defendant says plaintiff later reported the matter to the chief of their community and the chief said they should go home and the elders of their family who are their uncles to resolve the differences for them.

6. Defendant says it is not true that the chief of Yorogo after having a discussion with the two elders of their family said they should follow the sharing of their late father. Defendant also says it is never true that the chief of Yorogo after meeting the five children of their father together with their uncle says that they should go by the sharing of their late father but rather says he cannot handle the matter. Defendant finally says the plaintiff is not entitled to his claims or at all.

Issues for Determination

7. The issues for determination in this matter are (a) whether or not the land in dispute was distributed to the parties or their mothers by their late father during his life time. (b) And if so, whether or not the said land should be re-distributed among the parties and their three other brothers.

Evaluation of Evidence, Legal Analysis and discussion of issu(es)

8. It is a trite law that it is the duty of a Plaintiff to prove his case for he who alleges must prove. The obligation or duties of parties to lead evidence; and to persuade the court, as to the credibility of his or her allegations are covered both by statute and plethora of authorities. Under sections 10, 11, 12 and 14 of the Evidence Act 1975 (NRCD 323) the burden of who has the responsibility to lead evidence is clearly set out. These are burdens of leading evidence and the burden of persuading a tribunal by leading credible evidence. Sections 11(1)(4) and 14 of NRCD 323 provides as follows:

11(1) For purposes of this Decree, the burden of producing evidence means the obligation of a party to introduce sufficient evidence to avoid a ruling against him on the issue.

(4) In other circumstances the burden of producing evidence requires a party to produce sufficient evidence so that on all the evidence a reasonable mind could conclude that the existence of the fact was more probable than its non-existence.

14 Except as otherwise provided by law, 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.”

9. Thus there are two parts to the duty to discharge the burden of proof. Thus, the twin burdens of proof and standard of proof contained in the provisions are: (a) There is the burden of leading evidence to back an assertion; and (b) the burden of persuasion i.e. leading evidence of sufficient standard to persuade a tribunal to rule in one’s favour. **See the case of Isaac Alormenu vs. Ghana Cocoa Board, Civil Appeal No. J4/86/2022, delivered on 8th February 2023.**

10. In the case of **In re Ashalley Botwe Lands; Adjetey Agbosu & Ors v Kotey & Ors [2003-2004] SCGLR 420, at pp. 464-465,** Brobbey JSC explained the law on burden of proof thus:

“The effect of sections 11(1) and 14 and similar sections in the Evidence Decree, 1975 may be described as follows: 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 that determination depends on evaluation of facts and evidence, the defendant must realize 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 logical sequel to this is that if he leads no such facts or evidence, the court will be left with no

choice but to evaluate the entire case on the basis of evidence before the court, which may turn out to be only the evidence of the plaintiff.”

11. In Ackah v Pergah Transport Ltd., 2010] SCGLR 728, Sophia Adinyira JSC stated on the burden of proof at p.736 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. The method of producing evidence is varied and it includes the testimonies of the party and material witness, admissible hearsay, documentary and things (often described as real evidence), without which the party might not succeed to establish the requisite degree of credibility concerning a fact in the minds the court or tribunal of fact such as a jury. It is trite law that matters that are capable of proof must be proved by producing sufficient evidence so that on all the evidence a reasonable mind could conclude that the existence of the fact is more reasonable than its non-existence. This is a requirement of the law on evidence under Section 10(1) and (2) and 11(1) and (4) of the Evidence Act, 1975 (NRCD 323)”.

12. In Air Namibia (Pty) Ltd. V. Micon Travel & Tour & 2 Ors, [2015] 91 G.M.J, It was held at page 177 that:

“It is trite law that it is the duty of a Plaintiff to prove his case for he who alleges must prove. In other words, it is the party who raises an issue essential to the success of his case who assumes the burden of proving such issue. This burden of proof is statutorily defined in sections 10 (1) and (2) 11(1) and (4) and 12(1) and (2) of the Evidence Act, 1975 (NRCD 323) and explained in the case of Adwubeng v. Domfeh [1996-97] S.C.G.L.R. 660. It must be noted that specific pleading of an issue of fact by a plaintiff in the civil case requires a specific denial of that issue of fact by the defendant in his statement of defence in order to cast a duty on the plaintiff to adduce credible and sufficient evidence of that issue of fact in order to succeed in his claim. That is the rationale behind the enactment of section 10, 11 and 12 of the Evidence Act, 1975 (NRCD 323). Thus section 11(4) and 12(2) of NRCD 323 has provided in clear and uncertain terms that the standard of proof in the civil case is proof by a preponderance of the probabilities Adwubeng v Domfe (supra). But

a bare assertion of the plaintiff in his evidence of the issue of fact he had asserted in his pleadings will not be sufficient to discharge his burden of proof of that assertion if he wants to succeed in his claim. He must go further to produce other evidence of facts and circumstances from which the court can be satisfied that what he has asserted is true. Such other evidence of such facts may include documentary evidence of the issue(s) asserted.”

13. Also, it is a settled principle of law that a bare assertion or merely repeating a party’s pleadings in the witness box without more does not constitute proof. **In KLAH V. PHOENIX INSURANCE CO. LTD [2012] 2 SCGLR 1139**, this principle was reiterated:

“Where a party makes an averment capable of proof in some positive way e.g. by producing documents, description of things, reference to other facts, instances and his averment is denied, he does not prove it by merely going into the Witness box and repeating that averment on oath or having it repeated on oath by his witness. He proves it by producing other evidence of facts and circumstances from which the Court can be satisfied that what he avers is true.”

See also **Majolagbe v Larbi & others (1959) GLR 190-195** and **Klutse v. Nelson [1965] GLR 537**.

14. In instant case, the Plaintiff testified himself and called one witness. The defendant also testified himself and called one witness. From the evidence on record, the court found the following facts that:

- a. The parties herein are brothers with three other brothers.
- b. The land in dispute was inherited by their late father from their grandfather.
- c. The parties’ late father farmed on the disputed land in his lifetime.

- d. The parties' late father married two wives- Plaintiff's mother is the first wife and Defendant's mother is the second wife.
- e. Parties' late father in his wisdom shared the said land in dispute between the two wives with their respective children during his life time.
- f. The parties and their mothers have been farming on their respective portions of land for the past 15 years.
- g. The defendant claims their father told them to reshare the land in issue after his death but plaintiff disagrees. Hence the commencement this suit.

15. The defendant admitted that their father shared the land in dispute to his two wives (parties' mothers) and that they have been farming on their respective portions of land for the past 15 years. However, the defendant claims their father asked them to redistribute the land in dispute among the parties and their three other brothers which plaintiff has denied. The Defendant therefore has a burden to convince this court that their father after sharing the land in dispute asked them to reshared it after his death. Unfortunately, the defendant has failed to provide any cogent evidence in support of this allegation.

16. The defendant also admitted their father distributed his rice farm among them and their three other brothers. It interesting to note that the defendant is not asking for the rice farm to be reshared except the land given to their mothers and their respective children.

17. Be that as it may, the parties' mothers are entitled to the share of the estate of their late husband or the parties' late father. It will be contrary to law for this court to sanction or condone redistribution of the land in dispute to the parties and their three other brothers without their mothers. And as the parties' late father gave the said land in dispute to his two wives with their respective children as established by the evidence on record, this court has

no cogent reasons why it should interfere with the gift or distribution made by the parties' late father in his lifetime.

18. So, having examined the whole evidence adduced by the Plaintiff and Defendant on record in accordance with the above-mentioned authorities, the court holds that the Plaintiff has proved his case to the satisfaction of this court. Thus, he has established the existence of the facts contained in his claim by preponderance of the probabilities and the court holds that:

- a. Plaintiff's action succeeds. It is hereby ordered that the parties should abide by the distribution made by their late father in his life time.
- b. The defendant, his agents, workmen and assigns are perpetually restrained from interfering with Plaintiff's portion of his farm land.
- c. It is further ordered that all properties which had not been shared before the demise of the parties' late father should be distributed among the parties and their siblings as well as their mothers in accordance with the **Intestate Succession Law, 1985 (PNDC Law 111)**.
- d. There will be no order as to costs.

(SGD.)
H/W MAWUKOENYA NUTEKPOR
(DISTRICT MAGISTRATE)