

IN THE DISTRICT COURT, KADJEBI IN THE OTI REGION OF THE REPUBLIC OF GHANA HELD ON THE 14TH DAY OF JULY, 2023 BEFORE H/W ERIC K. FIAMORDZI ESQ., (MAGISTRATE)

SUIT NO. A1/03/2021

ARMSTRONG OWUSU
SUING FOR AND ON BEHALF
OF THE OTHER CHILDREN OF
KWAME OWUSU (DECEASED)
PER HIS LAWFUL ATTORNEY
OWUSU GEORGE

PLAINTIFF

V

1. KUDJO BEKOE
2. ALARU
3. AUGUSTA AGYEI
PER HER LAWFUL ATTORNEY

DEFENDANTS

JUDGEMENT

This judgment is the outcome of a civil action taken against the Defendants by the Plaintiff in fulfillment of the District Court Rules 2009,C.I 59,Order 2 rules 3 (6) for the reliefs below;

1. Declaration of title and ownership of all that piece or parcel farmland situate, lying and being at a place commonly known and called Kordibenu and bounded
on one side by Aniwa,
on another side by Bona,
on the third side by Kofi Nyarko and
on the fourth/last side by Akpemado.
2. An order for perpetual injunction restraining the Defendants, their agents or labourers from entering the disputed land until the final determination of this action.

3. Cost

SUMMARY OF SUBJECT MATTER OF CLAIM

Plaintiff is a farmer resident at Okadjakrom and bring this action against the Defendants jointly and severally for and on behalf of his other siblings from Okadjakrom. The first Defendant (D1) is a retired police officer living at Okadjakrom while second Defendant (D2) is a farmer living at Djindjin. Plaintiff avers that his/their grandfathers were warriors and during the war between the Buem and the Ashantis in the year 1892, the Ashantis were driven away to their current place of abode by the Buems. Plaintiff states that their land stretches from Jasikan to Akporsor and share boundary with the people from Akporsor in the Republic of Togo. Plaintiff avers that after driving away of the Ashantis, the Paramount Chief of Buem Traditional Area, Torgbi Akpandja, requested all the natives of Buem to cultivate the land they have driven away the Ashantis from.

Plaintiff further states that his father, Kwame Owusu, was also among those who cultivated the said land. Plaintiff states that his father cultivated cocoa farm on a portion of the said land and bounded on one side by Aniwa, on another side by Bona, on the third side by Kofi Nyarko, and on the last side by Akpemado.

Plaintiff contends that they were in peaceful possession of the said cocoa farm until the demise to his father and the Plaintiff and his siblings are now in possession of the said cocoa farm. Plaintiff continues that, he had travelled to Accra, and on his return, he was informed that the first Defendant had pledged the said cocoa farm to the second Defendant (D2). He added that he and his siblings summoned the first Defendant before Nana Owusu Sekyere, but the first Defendant (D1) said, he had already sent the matter to the Chief of Okadjakrom hence he was not ready to attend the Nana Owusu Sekyere's arbitration. All efforts to let the Defendants to give vacant possession of the Plaintiff's cocoa farm cannot succeed hence this action. Wherefore the Plaintiff claims against the Defendants jointly and severally as per the reliefs endorsed on his writ of summons.

On the 24th day of September, 2020, the first Defendant filed a motion on notice with an accompanying affidavit for an order of the Court to strike out his name. He stated in his affidavit that the Plaintiff is well aware of the fact that one Nana Adjei III (deceased) owns a large cocoa farm there, and that the children of Nana Adjei III are now in charge of the cocoa farm. He added that he (first Defendant) is not an administrator of the late Nana Adjei to be sued on the subject matter and that the Plaintiff is aware that the children of Nana Adjei are the ones who pledged the cocoa farm to the second Defendant (D2).

He therefore prayed the Court to non-suit him.

On the 29th day of September, 2020, the third Defendant applied by a motion on notice with an accompanying affidavit for joinder to protect her interest and that of her other family members.

On the 7th day of October, 2020, the Plaintiff filed an affidavit in opposition to the first Defendant's application. According to the Plaintiff, much harm would be done to him and his other siblings if the first Defendant (D1) is non-suited.

On the same day, 7th day of October, 2020 the Plaintiff filed a motion on notice with an accompanying affidavit praying the Court for an interim injunction order against the Defendants.

On the return day (i.e 12/10/2020), the plea of the Defendants were taken in open Court. They both pleaded "not liable" to the reliefs of the Plaintiff. On same day the court refused the application of the first Defendant to be non-suited after he moved the motion and they (the parties) were heard. The Court also granted the application for joinder by the third Defendant (D3) after she moved the motion but the Plaintiff did not oppose to same.

On the 3rd day of November, 2020, the third Defendant (D3) filed a notice of counter claim and counter claimed against the Plaintiff for the following reliefs:

Declaration of title of ownership of that piece of cocoa farm land situate, lying and being at a place known and called Kordibenu, and bounded;

On one side by Anima,

On another side by Kwesi Bekoe,

On the third side by Essua Nyarko,

On the last side by Kwame Owusu, which her late grandfather, one Kwaku Adjei (deceased) had acquired through purchase at Kordibenu from the first Paramount Chief of Buem, Nana Akpandja, (Osam Kwabena). According to her (third Defendant) her biological father Nana Adjei III, one Kwesi Bekoe and Opare are children of Kwaku Adjei. So, Kwaku Adjei took his children onto the land after which he (Kwaku Adjei) went and brought some of his relatives namely Nicho, Essau Nyarko, Misre, and Kwaku Owusu also onto the land.

According to the third Defendant, her late father before his demise in the year 1977, had cultivated vast cocoa farms on the said land. So, they have been in possession of the said cocoa farms ever since.

According to the third Defendant, in the year 2017, she and her other siblings needed some money to renovate their father's dilapidated house/building at Okadjakrom. So, they contacted their farm labourer one Kassion Allalu (second Defendant) to help them with the amount of five thousand Ghana Cedis (GH¢ 5,000.00).

The third Defendant concluded that they therefore pledged their father's cocoa farm to the second Defendant for ten (10) years, after he (second Defendant) had gotten the money for them.

Wherefore, she (third Defendant) counter claims against the Plaintiff as per her reliefs.

On the same date (3/11/2020), the third Defendant filed a motion on notice with an accompanying affidavit to set aside the motion for interim injunction filed by the Plaintiff.

The Plaintiff was himself present when the Court visited locus-in-quo. He was however unable to demarcate and describe the boundaries of the land for which he is before the Court. One Nana Apprem who is not a party in the suit rather appears to be vested in the matter than the Plaintiff, who later on gave a power of attorney to one George Owusu to handle the matter on his behalf.

The second Defendant as at the time of the visit to the land had cultivated maize and other food crops on the land.

In order to create a level playing field for both parties, the Court ordered that proceeds from the food crops to be harvested must be shared between the parties after the expenses are sorted out.

The parties relied on the witness's statements they filed in their evidence in Chief and defence. The third Defendant (D3) was able to clearly demarcate and describe the boundaries of the land for which they are before the Court.

They were also made to cross examine each other on oath and they did.

The issues for the determination of this court are whether or not;

1. The declaration of title and ownership of the now disputed portion of the land should be vested into the Plaintiff or the Defendants.
2. The Plaintiff or the Defendants should be restrained from interfering with the disputed portion of the land.
3. Cost should be awarded against the Plaintiff or the Defendants.

In the case of *Yawsam V Mensah* [2012]38 MLRG @ 124(3) the Supreme Court per Justice Anin Yeboah (as he then was) stated "... when a boundary or land dispute is in issue with an adjoining land, a Court of law is bound to ascertain the exact boundaries of the parties. The trial judge needs to give reasons for so believing one side against the order" see also *Aryeetey (deceased) Aryeetey V Okwabi* [1987-1988]2 GLR 44.

In the instant suit, the Plaintiff has been unable to identify the now disputed portion of the land, let alone describe the boundaries on oath.

The third Defendant, who has from the face of the records, leased the land to the second Defendant, and which the second Defendant has cultivated with food crops and cash crops, has been able to describe the land clearly as contained in her counter claim.

I wonder as a Court, if it was true that the Plaintiff actually travelled to Accra and has left the land to fallow. Does it mean the Plaintiff has no family, relatives, agent or caretaker to entrust the land to his or her care.

As a Court, I have taken judicial notice of the fact that Nana Apprem has been in constant contempt with the order(s) of this Court. He (Nana Apprem) is the architect behind the Plaintiffs' action before the Court.

From the evidence adduced in Court, and the exhibits filed the Plaintiff appear to be alien to the subject matter.

In the case of *In Re: Ashaley Botwe lands, Adjetey Agbosu and others V Kotey and others* [200-2004] SCGLR,420,425,426, Brobbey J.S.C (as he then was) summed up the principle in the following way:

“... A litigant who is a Defendant in a civil suit does not need to prove anything; the Plaintiff who took the Defendant to Court has to prove what he claims or is entitled to from the Defendant”

Also in the classic case to *Fofie V Wusu* [1992-1993] GPR 877 is that, “... it is the Plaintiff who bear(s) the burden of establishing the identity of the land he is laying claim to. Failure to prove this identity is fatal to a claim for declaration of title. To succeed in an action for declaration of title to land, a party must adduce evidence to prove and establish the identity of the land in respect to which he claimed a declaration of title.

The inability of the Plaintiff to file a reply/rejoinder to the counter claim filed by the Defendants although he (Plaintiff) was prompted by the Court to do so; his inability to clearly describe the boundaries of his alleged land, the facts and the law(s) would not permit the claim of the Plaintiff to have legs to stand on. As such the reliefs of the Plaintiff have to fall, and they have fallen.

In relying on the case of Sasu V Amoah Sakyi [1987-1988]2 GLR 221 holden 7 per Wuako J.A (as he then was) and other related laws quoted, the facts and the evidence adduce before this Court, I enter judgment on the counter claim of the third Defendant (D3). The Suit of the Plaintiff has fallen. I hereby injunct the Plaintiff, his relatives, heirs in title, workmen and all those who claim through the Plaintiff from interfering with the land of the third Defendant and her family. I award a cost of an amount of Four Thousand, Four Hundred and Fifty Ghana Cedis (GH¢4,450.00) against the Plaintiff in favour of the Defendants.

SGD.

H/W ERIC FIAMORDZI

(MAGISTRATE)