15/01/24

IN THE DISTRICT MAGISTRATE COURT HELD AT AKROPONG ASHANTI ON FRIDAY THE 15TH DAY OF JANUARY, 2023. BEFORE HIS WORSHIP ROCKSON A. K. KPODO ESQ. DISTRICT COURT MAGISTRATE.

SUIT NO. A1/06/21

DANIEL ATTA TUFFOUR **PLAINTIFF**

VRS.

NANA FRI BOANSI **DEFENDANT**

JUDGMENT:

Plaintiff claims per his amended writ:

1. Declaration that all that piece or parcel of land consisting of seven (7) building plots of land situate and being at a place commonly known and called Quansah Junction near Barekese is the property of plaintiff, Daniel Atta Tuffour.

2. Declaration that defendant has unlawfully trespassed unto the land in dispute.

3. Perpetual injunction restraining the defendant, their agents, assigns, workmen and anybody claiming through them from having any dealings with the said seven (7) building plots of land.

4. Damages for trespass.

5. Cost including legal fees.

In support of his claim, plaintiff's attorney says, as per his witness statement filed on the 17th day of February, 2022, that plaintiff acquired the seven (7) plots of land in dispute somewhere in July, 2015 from the defendant for which he was given allocation notes for each plot of land, after which plaintiff made a fence wall with cement blocks round all the plots of land in order to secure them from encroachment.

Plaintiff's attorney added that later defendant encroached on the said plots of land and molded cement blocks and deposited same on the plots of land in dispute and also erected a security post on same.

The attorney concluded that to the best of his knowledge plaintiff has legally acquired the plots in dispute and attached the power of attorney, the site plan and the allocation notes, which were marked A, B and C respectively.

Per his witness statement filed on the 13th day of May, 2022, PW1, Joseph Kwabena Poku corroborated the evidence led by the plaintiff's attorney and added that the land in dispute belongs to his family and that as the land caught up with the Barekese Town, they demarcated same and granted seven plots to plaintiff in 2015 when he showed interest in same.

PW1 added that after negotiations with the then occupant of the Barekese stool Nana Kwame Akowuah II, plaintiff was granted the disputed land, after which the said Nana Kwame Akowuah II gave plaintiff the allocation notes and ordered that PW1's uncle who was the head of the Asona Abusua of Barekese to give the indenture since

PW1's has been cultivating the said land all this while and that plaintiff was lawfully issued with the indenture in his presence, which PW1 attached as JKP1.

PW1 concluded that the land in dispute does not belong to defendant, the Anwomahene and that to the best of his knowledge the land in dispute is the bona fide property of plaintiff as he legally acquired same.

PW2 too corroborated the evidence led by the attorney and PW1 and added that his land shares common boundaries with the plaintiff's land and that when she was going to acquire his land, his grantor told him that her land shares boundaries with the PW1's land.

According to PW2, he acquired his land four (4) year before plaintiff acquired his and that when there arose a dispute between his land and that of plaintiff, it was he and plaintiff who settled same and that since then he has seen plaintiff working on the disputed land and that to the best of his knowledge the land in dispute belongs to plaintiff herein.

In his defense per his witness statement defendant, Nana Fri Boansi II, the chief of Anwoma Finso, says that he got to know plaintiff in 2016 when he approached him in view of acquiring the disputed plots of land numbered 2, 45, 58 and 60, situate on the Anwoma Finso Stool Land but he told plaintiff that he had divested his interest in the land to one Rev. Sarkodie Frimpong and since then he has not heard from plaintiff.

Defendant concluded that the disputed plots of land form part of his stool land hence the Barekesehene, Nana Kwane A kowuah has no capacity to allocate same to plaintiff and that any purported allocation notes and site plan issued to the plaintiff by the chief of Barekese is not genuine.

He added that if there is any development on the disputed plot of land same might have been undertaken by Rev. Sarkodie Frimpong and that plaintiff has no capacity to institute this action, hence the plaintiff has no cause of action against him since he is not the rightful person to be sued, as such plaintiff's action should be dismissed.

Defendant hereby attached a lease from the Lands commission, a site plan and an oath of proof marked 1 series and an allocation note, marked 2.

Gleaning from the above therefore the court hereby identifies the following issues for settlement:

1. Whether or not plaintiff genuinely acquired the land in dispute?

2. Whether or not the plaintiff has the capacity to institute this action against defendant before this court?

3. Whether or not plaintiff is entitled to his claim?

Both plaintiff's grantor and defendant claim that the plots of land in dispute form part of their various stool lands. While PW1 and PW2 who are the principal member and the head of the Asona royal family of Barekese claim same for the Barekese Stool, defendant being the chief of Anwoma and his Kontihene who doubles and his abusuapenin, claims same for the Anwoma Stool.

In fact, since the parties' claims bother on documentary proof the court would subject their evidence and of course the success of their case to strict documentary examination and proof.

It is the case of both the plaintiff's attorney and all his witnesses that the land in dispute was granted to the plaintiff by the then Barekesehene, Nana Kwame Akowuah II with the approval of the principal members of the royal Asona Family of Barekese.

In fact, plaintiff was issued an allocation note, exhibit B, by the chief of Barekese, dated, 30th July, 2015, which was duly signed by the chief, the stool elder, the chairman of the land allocation committee as well as the plaintiff himself being the allotee. Plaintiff was also issued a site plan with the 7 plots of land shown on same and on the 27th day of September, 2016, the family issued an indenture for the plaintiff which was duly signed by the head of the Asona family and the plaintiff and their witnesses.

Plaintiff's grantor is not alive to prove his title to the land in dispute but fortunately, the head and principal members of the Asona family Barekese, which the chief belongs, filed their witness statement in support of the grant they made to plaintiff and supported same with all the necessary documents, as they were all parties to the grant.

Defendant, on his part, apart from the documents procured by his alleged allotee, Rev. Sarkodie Frimpong, failed to tender any documents to prove that he is the allodial title owner of the land in dispute, to support his claims that the land forms part of his Anwoma Stool Land.

In fact, even the allocation notes that defendant purport to have issued to the said Rev. Sarkodie Frimpong is incomplete as same has not been signed by the allotee himself. Defendant's only witness, his Kontihene, failed to give evidence to this court in support of defendant's claim, in the sense that he filed a witness statement but counsel for defense failed to produce him in court to speak to the statement he gave to court as defense counsel closed his case after defendant gave evidence.

In any case, even if DW1had given evidence before this court his evidence would not carry any weight since all he captured in his witness statement are mere hearsay evidence which did not even say anything about the fact that he witnessed the sale of any land to the said Rev. Sarkodie Frimpong.

Also, cursory look at the allocation notes, marked 2 shows clearly that the document is fake as the letters on the copy look deep, depicting that the document has been tampered with. The date on the document is not properly written in the space provided, the name of the allotee is also not properly written in the space provided with some of the letters written below the dotted line provided and others showing an upward stroke.

In fact, by way of concealing the truth, defendant signed thumb-printed his witness statement instead of signing his signature as he did on the allocation note. Again, the signature of the kontihene as it appears on both the allocation notes is completely different from what he signed on his witness statement. Also, the kontihene has never stated anywhere in his witness statement that he doubles as the elder or head of family but he signed the allocation notes as the head of family. In the same way, the allotee or the lessee's signature on the proof of oath is totally different from what he signed behind the site plan.

In fact, the position of the law on documentary title as outlined in **Second Edition of page 101 of the GHANA LAND LAW AND CONVEYANCING by BJ da Rocha and CHK Lodoh**, is that:

'Where two persons produce documents to prove their title to a particular piece of land, the question the court has to decide is which of the documents confers a better title. In deciding this question, the court takes into account the competency of the

grantors of the persons to make the grants concerned. Whether or not the grantors had any title in the land concerned to transfer to the grantees, among other considerations. Sometimes mere registration of a valid title document affecting the same land and made by the same grantor may be the only deciding factor between on title document and the other. This is however subject to the caveat that the grantee who did not register his document did not, if his grant is earlier in time takes any steps towards effective possession of the land concerned, apart from his unregistered documentary title. If he was in effective possession of the land then the mere registration by the later grantee of his documentary title is insufficient to deprive the prior grantee of his title to the land concerned. This is because registration, particularly under the land registry act, Act 122, of 1962, only gives notice of the fact of the registration of the instrument but does not give validity to the transaction by the registered instrument.

From the above it is clear that though plaintiff did not show any proof that he has registered the land he acquired from the Barekesehene, he has been in effective possession of the since he acquired same in 2015. Defendant on the other hand exhibited some documents he procured from the lands commission but apart from his documents being fake, his mere registration of the land is not sufficient since plaintiff is effective possession of the land and his grant is earlier in time.

In fact, the above position was affirmed by Archer J, as he then was, when he held in the case of **KWOFIE V. KAKRABA [1966] GLR 229, 231 – 232** that:

'…….. indeed, the Lands Registry does not undertake investigation of title for parties. The registry merely registers a document registrable on delivery of particulars and on payment of the assessed fees. Registration does not import state-guaranteed title. <u>It is only where parties have taken their respective grants from the same grantor or his privy that registration confers priority on the party who has</u>

registered his document. Where the parties derive their titles from different grantors, registration is of no consequence and the court will not neglect its duty to ascertain who has valid title. In other words, registration will not confer any legal right or title on any party who took his grant from a person who had no title at all to convey. ***Thus section 24 of the Land Registry Ordinance now repealed by the Land Registry Act, 1962 provided that, "Registration shall not cure any defect in any instrument registered, or confer upon it any effect or validity which it would not otherwise have had."*** **……. Nevertheless, there is no provision which states that the validity of any instrument shall not be questioned in any court of law after registration. I therefore hold that although registration is now compulsory and constitutes notice to all persons, yet the Act does not confer state-guaranteed title on grantors who have no title at all and the registrar is under no statutory obligation to investigate a title before registration'.**

In **paragraph 9 of his witness statement** defendant says:

"If there is any development on the disputed plot of land the same might have been undertaken by the afore-named Rev. Sarkodie Frimpong."

In fact, the above sentence presupposes that defendant does not know the one who developed that land in dispute. If indeed the land in dispute was sold to the lessee by the defendant, he should have known who develop the said plot of land.

The court is therefore of the considered view from the above that defendant's evidence falls short of the general principle of law which enjoins a party who alleges a material fact in a case before a court of competent jurisdiction to prove same or his claim fails. All the documents he tendered in evidence in support of his claims are all fake and since the plaintiff's grantor has been able to give him all the necessary genuine

documents covering the land, duly endorsed by all parties, it is the case that plaintiff has genuinely acquired the plots in dispute.

Again, it is defendant's case that plaintiff's grantor has no capacity to grant the parcel of land in dispute to the plaintiff herein.

In fact, when this suit was filed it was one Nana Ansah whom plaintiff claimed he found on the land dispute that he sued. It was later, about almost a year later that the said Nana Ansah told this court that defendant herein, Nana Fri Boansi was the one who granted the land in dispute and that he pleaded with the court disjoin him and make Nana Boansi the defendant, hence Nana Fri Boansi became the sole defendant in this case.

From the above, the court is of the view that since plaintiff did not sue defendant, he cannot challenge plaintiff's capacity to sue him before this court.

Thus, plaintiff has been able to discharge the burden on him to adduce sufficient evidence in order to avoid a ruling against him in consonance with **section 11 (1) of the evidence Decree, NRCD 323 of 1975** to the effect that:

'For the 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'.

Thus, plaintiff has been able to prove his claim on the balance of probabilities that the land in dispute indeed genuinely granted to him hence it belongs to him

Judgment is hereby entered for plaintiff on his claims.

General damages of GHC2,500 is hereby awarded for plaintiff against defendant.

Perpetual injunction is hereby decreed against defendant, his agents, workmen, etc. from having any dealings with the land in dispute.

Cost of GHC1500 is hereby awarded for plaintiff against defendant.

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H/W ROCKSON A. K. KPODO