

IN THE DISTRICT MAGISTRATE COURT HELD ON THE 30TH DAY OF OCTOBER, 2023,
BEFORE HIS WORSHIP ROCKSON A.K KPODO. THE DISTRICT MAGISTRATE

SUIT NO A1/10/19

HAJARA INSUAH

VRS.

ZULKARAIR MOHAMMED & 2 OTHERS

J U D G E M E N T:

Plaintiff is claiming against defendant declaration of title, ownership and recovery of possession of a building plot No. 2 situate and lying at a place commonly known and called Boaso Atwima stool land of which building plot the defendant has sold without plaintiff's notice.

Plaintiff's case in support of her claim as per her witness statement is that during the lifetime of her husband she assisted him to acquire a plot of land No 2 Block OB, Ama Konadu Street at Boaso Atwima in the Ashanti Region of Ghana from the lawful custodians of the land after which the Boaso stool issued an allocation note and site plan in favor of her late husband which is marked 'MOB' 1 series and that after the demise of her late husband, defendant who was her late husband's friend trespassed on the land without her authority. According to plaintiff, after the funeral rite of her late husband, she acquired the Letters of Administration to enable her manage and administer her late husband's estate which she attached as exhibit 'MOB' 2 series and that since her husband's death she has taken all necessary steps as the administratrix and beneficiary of her husband's estate to compel defendant to leave the said land to her but

they continue to occupy portions of the land unlawfully. She concluded that it is not true that the land in dispute was acquired by her late father-in-law and same was transferred to the defendant as they claim.

PW1 added, that when the new chief of Boaso, Nana Kofi Brempong II took office, they made announcement for those acquired lands from the stool to validate and register their documents and that two (2) years after the said announcement, defendant brought to palace three (3) different allocation notes for validation and registration and that two(2) of such allocation notes bearing the names of defendant while the other one, bears the name of plaintiff late husband's and they accordingly registered those documents name for him and rejected those that are not in his name after defendant told them that his sick friend was the owner of the allocation note that was not in his name and that, defendant failed to comply with their orders to bring his friend to them whenever he returns but to no avail.

PW1 added that, it was not long when plaintiff and her brother came to the palace with some allocation note and site plan issued by the stool to report to them that defendants are claiming ownership of the land being developed by plaintiff and that when plaintiff and defendants were invited to palace to resolved the issue defendant admitted that, the land in dispute belongs to plaintiff's husband but he released half ($\frac{1}{2}$) of it to him in his lifetime for the construction of a mosque but the palace rejected the defendant's claim as defendant failed to substantiate their claim and concluded that the land belongs to plaintiff's late husband and that defendant further told the chiefs that plaintiff gave him money to buy sand, stone and thirty(30) bags of cement for plaintiff to commence her building on the disputed land but defendant continued to interfere with plaintiff' peaceful enjoyment of the land in dispute till date; although the land belongs to plaintiff's late husband and not for them.

Plaintiff also attached an allocation note marked 2 Block OB and a site plan marked B and also and LA marked 'C'.

In his statement 1st Defendant says that, the disputed plot No 2 Obaapanin Ama Konadu Street Boaso was originally acquired by plaintiff's late father-in-law, Mohammed Musah who was joined to the instant action by this court in December 2018 and when 3rd Defendant now deceased, appeared before this court in March 2019 he pleaded not liable and added that the plot in dispute belongs to him and has been sold to 2nd Defendant and that he was the one who purchased the aforementioned plot of land and on behalf of 2nd Defendant who is a resident in Germany, now deceased, and later issued with an allocation note and site plan on 17th day of June 2008 by the Atwima Boaso Stool in the name of 2nd Defendant marked 3 and 3A after which she constructed one (1) room foundation on part of the dispute land.

PW1 added that, his late uncle 2nd Defendant in his lifetime, was gifted the disputed plot of land by the then late chief of Boaso and subsequently invited his late son Ibrahim Mohammed and informed them and asked his late son to find some money to acquire the documents covering the disputed plot of land and later his uncle informed him that his late son has provided the money and the documents were procured and that later his late uncle informed him to witness the sale of the disputed plot of land to 1st Defendant which he did and that it was sold at GH¢ 5000 which was paid by first defendant to his late uncle in his presence and in the presence of his friend called Cudjoe.

1st Defendant tended in evidence the order for the joinder marked 1, the proceedings of 18th March 2019 marked 2 a site plan marked 3 and an allocation note marked 3A and the picture of a wooden structure on the land marked 4.

From the above, the court hereby identifies the following issues for determination

1. *Whether or not the land in dispute was originally acquired by*

3rd Defendant plaintiff's late father-in-law?

2. *Whether or not 3rd Defendant later transferred his interest in*

the land to 2nd Defendant and witnessed by DW1?

3. *Whether or not, it was 1st Defendant who purchased the disputed plot of land for and on behalf of 2nd Defendant from 3rd Defendant?*
4. *Whether or not the land in dispute was gifted to 3rd Defendant by the chief of Boaso?*
5. *Whether or not the land in dispute belongs to plaintiff's husband?*
6. *Whether or not Plaintiff's late husband has transferred part of the land in dispute to 1st Defendant for the construction of a mosque?*
7. *Whether or not Plaintiff is the administratrix of her late husband's estate?*

Defendants' claim is that the land in dispute was originally acquired by 3rd Defendant from the chief of Boaso. His witness, DW1 says that the land in dispute was gifted to 3rd Defendant by the chief of Boaso. But none of them was able to show any documentary proof of the gift of the land to 3rd Defendant apart from the 18th March 2019 proceedings of this court which shows that 3rd Defendant pleaded not liable to the claim by plaintiff.

In fact, apart from telling the court that he was not liable to plaintiff's claim, 3rd Defendant has not been able to tell this court that he has sold the land in dispute to D1, though D1 whom DW1 claimed purchased the land for D2 from D3, was in open court on that day. In fact, D1 should not be the one who should tell the court that the land in dispute was sold to 2nd Defendant, through him since both of them were in court on that day when D3's plea was taken.

The court is of the view that if indeed 3rd Defendant sold the land in dispute to 2nd Defendant through 1st Defendant who is in open court on that day, 1st Defendant would have told the court that he sold the land in dispute to him, since D2 is the one D3 knew as the one who purchased the land on behalf of D2.

Thus, from the evidence adduced so far, 2nd Defendant has failed to prove to this court that:

- a. the land in dispute belongs to 3rd Defendant,
- b. that he has not also been able to prove that 3rd Defendant transferred the land in dispute to 2nd Defendant through 1st Defendant and
- c. that the land in dispute was gifted to 3rd Defendant by the chief of Boaso.

In fact, the only exhibits he has been able to tender in evidence in support of his counter claim are the order for the joinder of the 2nd and 3rd defendants to the suit, marked 1, the proceedings of this court which shows the 3rd defendant's plea after he has been joined to the suit, marked 2, a fake site plan, marked 3, a fake allocation note, marked 3A and a photograph of the wooden structure he erected on the land to show that he is in occupation, marked 4, which were all rejected by his own grantor, the Boaso stool.

Of course, the secretary to the chief of Boaso who testified as a PW1 denied that the land in dispute was gifted to 3rd Defendant by the custodian of the Boaso stool.

Plaintiff on the other hand claims that the land in dispute was acquired by her late husband after which the chiefs issued an allocation note and side plans to him in his lifetime and that it was after the death of her late husband that 1st Defendant trespassed on the land and all attempts to stop him failed.

In fact, Plaintiff's claim was supported by PW1, the secretary to the chief of Boaso to the effect that the land in dispute belonged to plaintiff's late husband.

From the above the court is of the view that plaintiff has been able to adduce sufficient evidence to avoid a ruling against her as captured in **Section 11 (1) of the evidence decree, NRCD 323, 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'.

Plaintiff has therefore been able to prove on the balance of probabilities that the land in dispute was acquired by her late husband.

Judgement is therefore entered for plaintiff on her claim.

The court hereby grants the request of counsel for plaintiff and awards cost of GH¢15,000.00 for plaintiff against defendant, considering the fact that this suit has been before this court since 2018.

SGNED

H/W ROCKSON A.K KPODO

(DISTRICT MAGISTRATE)