

21/11/23

IN THE DISTRICT COURT HELD AT THE AKROPONG DISTRICT COURT ON
WEDNESDAY THE 21ST DAY OF NOVEMBER, 2023 BEFORE HIS WORSHIP
ROCKSON A. K. KPODO ESQ DISTRICT MAGISTRATE.

SUIT NO. A1/12/22

**THE ROMAN CATHOLIC CHURCH
(Per the parish chairman George Owusu Bandoh)
& ONE ANOTHER**

V.

KWABENA BOATENG
.....

JUDGMENT

Plaintiffs who are members of the Roman Catholic Church, Akropong Parish, claim against defendant:

- a. Declaration of title, ownership and occupation of plot number 3 situate and lying at a place commonly known and called Akwaboah crescent on the Sokwai stool land which building plot, defendant is claiming ownership and developing same.
- b. Plaintiffs are hereby seeking an order of perpetual injunction to restrain defendant, his assigns etc from having any dealings with the land in dispute.

Plaintiffs' case in support of his claim is that around April, 2019, the Catholic Church at Ntensere used to hold church service in the classroom. But later when, the Government made a law that all churches should cease using classrooms for church services the asked 2nd plaintiff to look for some land for them to acquire same for the purpose of building a chapel thereon, hence a month later, he came to inform the

church that he met one Edward Darko Agyemang popularly referred to as 'Borga' who said he has a plot of land to be given to the church.

According to P1 when they went to look at the land and inspected the documents covering the land they decided to acquire same, hence they went to the District Assembly to do a search in order to find out if the place is free from any encumbrances and that as the documents covering the land show that the place is a stool land they went to the chief of the town to find out from him and he admitted same so he gave us all the necessary documents covering the said land, after they made a valuable consideration to the said 'Borga'.

P1 added that after they acquired that the Borga authorized them to demolish all the two buildings on the land at the time and that as the land is closer to the road, they left 28 meters from the road to the land so as to get access to the land after which they started building on the land and realized that someone had poured some sand on the 28 meters space they reserved in front of their land.

P1 added that when they enquired from the local chairman i.e., 2nd plaintiff, he told them that it was one Kwabena Boateng, i.e. defendant, who encroached on the land and that when they met the said Kwabena Boateng, he told them that he has no business with them, so, they decided to meet defendant with the chief but he refused to meet them, hence this suit.

P1 tendered in evidence documents covering their plot number 6 and they were marked (a) Indenture, (b) Allocation paper, (c) site-plan and pleaded with the court to declare title to the said land to the Catholic Church.

PW1 added that he was the one who transferred the land in dispute to the plaintiff through the original grantor, Nana Addo, the Sukwaihene and that as soon as they started building their church, defendant came and started building in front of the land so, he called him and cautioned him but he did not heed his advice, hence he informed his grantor and when he was invited, he refused to attend to the chief's call but as the

defendant persisted in his encroachment. He advised the church to sue him hence this suit.

In his defence, defendant says that the land in dispute belongs to his paternal father Kweku Addae of blessed memory and that his brother Gabriel Amponsah Mensah built a house on the land in 1985 and after that, in 1992, the chief, Nana Appiagyei Duah ordered Nana Adjei Tuffour to demarcate the land for him and also demarcated part for Kwadwo Darko Agyemang for his poultry farm project hence they both share boundaries with the poultry farm.

Defendant added that later when Nanan Addo took over as the chief, he did a layout of the area, hence there was a road through the land, thereby dividing the plot into two halves and that he started a building on the land in 2019 and that it was then that he saw that the poultry farmer came to sell part of his plot of land to the plaintiffs herein.

Defendant added that later, the church elders called him to sell my plot to them so they can use it as a car park but he refused and continued the building and later realized that the church had demolished his building on the land but he later continued to the present stage.

DW1 added that in 1994, Kwadwo Darko Agyemang came to me to assist him to acquire some land for a poultry project and that as his father was the chief of the place, he sent him to the chief, Nana Adjei Tuffour, hence he gave the poultry farmer a parcel of land measuring 3 acres after which the chief sent him, one Charles and a Surveyor to demarcate the said land for poultry farmer, sharing boundaries with defendant herein.

DW2 added that the land in dispute belong to his grandfather Kweku Addae and that when Nana Adjei Addo became the chief he made a layout road which divided his land into two hence his house is now almost in the street so in 2006 he bought 3 trips

of sand on defendant's plot of land and later gave the land to defendant and he used his trips of sand to start the building.

Gleaning from the above therefore the court has identified the following issues for determination:

1. Whether or not defendant's land has encroached on plot number 6 belonging to plaintiff?
2. Whether or not defendant's building is on plot number 3?
3. Whether or not plaintiffs are entitled to their claim?

The evidence led so far by the parties is a clear indication that both parties have their various plots of land in the same area.

While plaintiffs claim that their land is plot number six (6) defendant claims that his land is plot number three (3). Plaintiffs have maintained throughout the trial that the plot of land occupied by defendant's building is part of their plot number six (6) but defendant denied it and maintained that the land on which he built his house is plot number three (3) and not plot number six (6) and alleged by plaintiffs.

In fact, a visit to the locus in quo shows that plaintiffs' land covers a vast space sharing a common boundary with defendant's land, with only about fifteen (15) feet between them. At the locus defendant told the court that his land, plot number three (3) has been divided into two (2) by the road which passed in front of his land after the rezoning of the land in the area.

Also, a comprehensive field plan of submitted by the land commission indicates that plaintiffs' land occupies the whole of plot number six (6) and part of plot number three (3).

In fact, the court has therefore adopted the land commission's report as it reflects the correct position of the issue on the ground as seen by the court at the locus in quo.

The court is therefore of the considered view from evidence led so far that plaintiff has not been able to adduce sufficient evidence as required of him by law for the court to rule in their favor 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, defendant, on the other hand has been able to prove on the balance of probabilities that plot number six indeed belongs to him and that plaintiffs have rather encroached on same.

Judgment is therefore entered for defendant.

Cost of GHC500 is hereby awarded for defendant against plaintiff.

SGNED

H/W ROCKSON A. K. KPODO