

**IN THE DISTRICT COURT HELD ON FRIDAY THE 27TH DAY OF
OCTOBER, 2023 BEFORE HER WORSHIP VICTORIA VERA AKONU
DISTRICT MAGISTRATE**

SUIT NO: A1/12/2023

EBO KWABENA

Of Basingele

..... **PLAINTIFF**

VRS.

1. KWAKU ATTA

2. FELIX KWAKU AGYARKO a.k.a Kwaku

Of H/No. 62 Shama Junction

} **DEFENDANTS**

PARTIES: Plaintiff and 1st Defendant present

2nd Defendant absent represented by the 1st Defendant

J U D G M E N T

The writ of summons initiating this action was filed on 13th February, 2023 and is endorsed with reliefs as follows:

- 1 “Declaration of title, ownership and recovery of possession of farmland situate, lying and being at Basingele on the Sefwi Anhwiaso Stool land and bounded by the properties of Auntie Kate, Abdulai and Koo Bornya which farmland is my late fathers bonafide property but the Defendant has taken possession of same and also claiming ownership,

2. Recovery of cash the sum of Sixty Thousand Ghana Cedis (GHS60,000.00) for destroying the Plaintiff's cocoa trees, oil palm trees and coconut trees.
3. General damages for unlawful trespass.
4. Perpetual injunction to restrain the Defendant herein, his assigns, privies and workmen from having anything to do on the disputed farmland until the final determination of the suit
5. Any further order(s) as the honourable Court may deem just, fit and appropriate".

The suit was initially against the 1st Defendant, however the 2nd Defendant was added by the order of the Court on an application by the Plaintiff on 29th March, 2023.

The Defendants also counter-claimed as follows:

- (1) Declaration of title, ownership and recovery of possession of farm land situate and lying at Basingele on the Sefwi Anhwiaso stool land and bounded by the properties of Auntie Kate, Abdulai and Koo Bornyah and
- (2) All Court incidental costs and any further order(s) the Court may deem fit to make.

The Defendants denied the Plaintiff's claims and so the Parties were ordered to file pleadings and they subsequently filed their various witness statements.

The 2nd Defendant testified on behalf of the Defendants since the 1st Defendant was his caretaker.

THE CASE OF THE PLAINTIFF

The case of the Plaintiff in summary is that the disputed farmland was broken in its virgin state by his late father Opanin Kofi Anyansah who acquired it from the then chief of Sefwi Pataboso about sixty (60) years ago and he was in peaceful possession until he died about forty (40) years ago.

He avers that he continued to be in possession of his late father's land, even cleared the portion which was not cleared and reduced same into cocoa plantation.

He states that after the demise of his father, the chief of Sefwi Anhwiaso one Nana Apakan tried to take the disputed land from him and so he informed his father's family yet none of them showed interest or ignored him. He however handled the situation even when the said chief had caused his arrest and he was detained in custody the family members never showed any interest.

He avers further that he has been in peaceful possession of his late father's land whereby he enjoys the proceeds of the cocoa farm for over Thirty (30) years, until his father's family approached him 2013 and started laying claims to portions of the property.

He states that along the line his late father's farmland including what he had cultivated into cocoa farm, was shared between him and his father's family. He tendered in evidence Exhibit "A" to support his assertion. He states that

when he fell sick some time ago, he pledged his portion that he got so that he could use the money to seek medical care outside this jurisdiction.

He states again that when he returned from his medical treatment, he went to the farm and then realized that his portion which he had cultivated cocoa, oil palm and coconut trees had been destroyed and the land sold to developers by the Defendants.

He contends that when he confronted the Defendants they could not give him any reasonable answer and they have also refused for the matter to settled amicably, hence this action.

Evidence of PW1

The evidence of PW1 as contained in his witness statement is that on 22nd May, 2013, he was invited by the chairman of the Unit Committee to discuss issues between late John Amoah who was the head of family of Abrade Royal Family, (now deceased and succeeded by the 2nd Defendant herein) and the Plaintiff.

He avers that after the meeting it was agreed that farmland located at Wassa Asankragua be given to the Plaintiff and his brother exclusively and the farmland in Bassinglele was divided into 3 equal parts and the Abrade Royal Family (2nd Defendant's family) got 2/3 while the Plaintiff got 1/3 which the Plaintiff was to cultivate and enjoy it during his life time. He states that it was the Plaintiff who recently called and told him that the Defendants have trespassed on to the land given to him and unlawfully allocating same to some developers.

THE CASE OF THE DEFENDANT

The 2nd Defendant testified for himself and the 1st Defendant. He states that the 1st Defendant is his nephew and a caretaker of the disputed land and that he succeeded his late brother John Amoah after his demise 3 years ago.

His testimony is that the disputed farmland was acquired by his late Opanin Kofi Anyansah (he tendered in evidence Exhibit 1) and reduced the entire land into cocoa farm during his life time before his demise and the Plaintiff took advantage of their absence and was in possession and control of the farm land for over 30 years before his late brother John Amoah got to know about it.

Accordingly, his late brother John Amoah issued a writ against the Plaintiff on behalf of his family to recover the farmlands from the Plaintiff and settlement was reached between him and the Plaintiff. The agreement reached was that the farmland at Wassa Kwabeng was given to the Plaintiff absolutely and the farmland located in Bassinglele was shared into 3 and the family got 2/3 while the Plaintiff herein got 1/3 for his life interest. He tendered in evidence Exhibit 3.

It is his evidence that before the settlement the late John Amoah got to know that the Plaintiff had pledged the farm to someone for Twelve Thousand Ghana Cedis (GHS12,000.00). He tendered exhibit 2 in support of his claim. His brother then paid the person and retrieved that land.

He avers after the settlement that the Plaintiff again pledged his 1/3 of which late John Amoah when he got to know paid the pledged amount and bought the farm from the Plaintiff. He tendered in evidence Exhibits 4 and 5.

Accordingly, the entire land came to his late brother's possession and since he succeeded his brother he took over after his demise and he has been managing and controlling same for his Abradze family and so the disputed farm did not belong to the Plaintiff. He denied causing damage to the Plaintiff's farm.

EVIDENCE OF DW1

The evidence of DW1 as contained in his witness statement is that he is the chief of Bassinglele and that about 3 years ago he received a complaint against the Plaintiff herein from one John Amoah in respect of the subject matter. He states that the said John Amoah told him that after the death of Kofi Anyansah, the Plaintiff's father, his family entrusted the disputed farmland into the care of the Plaintiff who was to harvest and render account to the family, but the Plaintiff failed to honour this obligation.

According to him, based on the above, he invited the Plaintiff and he admitted having done it wrongly, but the Plaintiff informed them that most of the cocoa trees were dead and that explains his inability to account to the family.

It is his evidence that the late Kofi Anyansah also had another farm at Wassa and so the family gave that farmland to the Plaintiff who pleaded through him for the Family to give a portion of the disputed farmland to him to cultivate for his subsistence since he lives in Bassinglele with his family and so he cannot go to Wassa for food.

Accordingly, the Plaintiff was given a portion of the farmland for his life interest only and not long after the farmland had been given to the Plaintiff, he sold same to one Osofo Emmanuel. So when John Amoah heard about this, he approached the said Osofo Emmanuel, paid him off and recovered the farmland from him.

EVIDENCE OF DW2

His evidence as captured in his witness statement is that about 3 years ago, the Plaintiff pledged the disputed farmland to him for Six Thousand Ghana Cedis (GHS6,000.00) for a period of four (4) years and just about 6 months after the pledge, the 2nd Defendant's late brother, John Amoah instituted an action against the Plaintiff herein for the recovery of the disputed land, however, the matter was settled.

According to him, during the settlement the farmland was divided into 3 and 2/3 went to the 2nd Defendant's family and 1/3 was given to the Plaintiff herein which eventually came into his possession because of the existing pledge. He harvested the farm for 2 years.

Later John Amoah approached him and recovered the farmland from him at a cost of Three Thousand Ghana Cedis (GHS3,000.00) with the reason that he had harvested the farmland for 2 years.

APPLICABLE LAW/BURDEN OF PROOF

The reliefs endorsed on the Plaintiff's writ of summons, indicate that he is seeking for a declaration of title to the disputed farmland and recovery of possession among other things.

The Plaintiff therefore has the burden to prove his case to the standard of probabilities according to law without relying on the weakness in the other party's case. He has the burden to identify positively the boundaries of the land in dispute, isolated acts of ownership to show she has been in peaceful possession and when that burden is discharged, a declaration will be made in her favour.

The Defendants have a counter-claim and a counter claim is a different action in which the Defendant counter claimant is the Plaintiff and the Plaintiff in the action becomes a Defendant, in the instant case. Where both parties were seeking declaration of title, recovery of possession and perpetual injunction in respect of the disputed piece of the land, each of them bear the burden of proof and persuasion to prove conclusively on a balance of probabilities, that he was entitled to the reliefs claimed. Thus Section 11(1) of the evidence Act, 1975 (NRCD323) enjoins the defendant in his capacity as a plaintiff in the counter claim to introduce sufficient evidence to avoid a ruling on the issue against him. See **SASU BAMFO VRS. SINTIM (2012) 1 SCGLR 136 AT 155 PER ROSE OWUSU JSC.**

In addition, the Plaintiff has to lead admissible evidence to prove his acquisition, boundaries and possession, or right to possession since the Defendants have denied his title to the disputed land.

In the case of **WEST AFRICAN ENTERPRISE LTD. VRS. WESTERN HARDWOOD ENTERPRISE LTD. [1995-1996] 1 GLR** at holding 3, it was held as follows:

“Where an averment made by one party in his pleadings was denied by the other in his defence or reply, it was necessary for the one who made that averment to produce evidence in proof of it. However, no principle of law required a party to prove an admitted fact. In the instant case, since the fact that the Apowa stool had granted a lease of the land in dispute to TBL was admitted by all the Defendants, that fact was not in dispute and no proof was required of it and therefore no issue was even joined on it by the parties in the summon for directions.....”

The Plaintiff must also prove the identity of the land he claims with the land in dispute in an action for declaration of title and recovery of possession. His claim will fail if he fails to prove the identity of the land he claims. Thus he will not be entitled to judgment in his favour.

In the case of ANANE VRS. DONKOR [1957] GLR 188 the Supreme Court held as follows:

“A claim for declaration of title or an order for injunction must always fail, if the Plaintiff fails to establish positively the identity of the land claimed with the land the subject matter of his suit”.

After a Plaintiff has established by evidence his acquisition and the boundaries of the land claimed, he must proceed to prove that since the acquisition of the land, he has been in peaceful possession, or exercised overt acts of ownership over the land.

Possession may be actual or constructive. It is actual when the Plaintiff is in physical possession of the subject matter and it is constructive when the

Plaintiff has right to possession or is exercising right of ownership over the land.

In the case of AKOTO VRS. GYAMFI ADDO& ANOR. [2005-2006] SCGLR 1018 Atuguba JSC stated that

“possession in law includes the legal control of the res in question”.

Issues for determination:

Whether or not the disputed land belongs to Plaintiff

In resolving the above issue, I will have to find out whether the Plaintiff pledged or sold the disputed farmland.

The case of the Plaintiff is that some time ago when he fell sick, he pledged the disputed farmland to someone and his father’s family became aware and so when they were sharing the entire land between him and his father’s family, the portion which he has pledged formed part of what was given to him and so when the 2nd Defendant sought to tell him that he sold that land to his late brother John Amoah, he denied.

The Defendants cross examined the Plaintiff extensively and this is what transpired on 3rd July, 2023 when the 2nd Defendant cross examined the Plaintiff:

Q: I am suggesting to you that you sold your portion of the 1/3 to John Amoah?

A: That is not correct.

Q: I am putting it to you that there were witnesses when you sold your portion of the land to John Amoah?

A: It is not true. What I sold to John Amoah is not part of the land that was given to me. What I sold to John Amoah is separate and different from what was given to me from my father's land.

Q: I am putting it to you that it was the land that was given to you that you sold to John Amoah?

A: That is not true. The land I sold to John Amoah was from Abunu tenancy agreement I had with my step mother Abena Deafo and sold my portion which I got when we shared the Abunu land between us.

Q: I am putting it to you that it was the land that the Committee shared for you that you sold to Mr. Amoah?

A: It was my stepmother's land which I got after abunu agreement and Abena Deafo also sold her portion to Mr. Amoah which he did not pay and when the woman died her family came to attack you to pay.

Q: I am putting it to you that what you just stated is not true?

A: I am telling the truth. I have the document which was executed between Abena Deafo and I. You have even attached a copy to your witness statement.

The document the Plaintiff just mention was admitted into evidence as Exhibit 4 which is dated 13th June, 2013.

The boundary owners described in this document that is exhibit 4 is different from the boundary owners that both Parties have stated in their statement of claim and the counter-claim respectively. Whereas both the statement of claim and the statement of defence have boundary owners as “.....bounded by the properties of Auntie Kate, Abdulai and Koo Bronya” that of exhibit 4 is “.....lying at Bassengele and bounded by the properties of Mame Abena Deafo, Op. Abdulai and John Amoah...”

From the above it is evident that the land the Plaintiff sold to the late John Amoah is different and separate from what was shared between him and his father’s family.

Even though the Defendants denied that the Plaintiff pledged the disputed land, 2nd Defendant tendered in evidence exhibit 2 which is titled pledge of a cocoa farm at Bassengele dated 11th February, 2013 between the Plaintiff herein and one Mr. Kofi Mensah for a sum of Twelve Thousand Ghana cedis (GHS12,000.00). The pledge was for a period of 8 years to be redeemed on 11th February, 2021.

The Defendants’ witness Emmanuel Nkansah (DW2) admitted under cross examination that the disputed farmland was not sold to him but was pledged to him.

This is what transpired on 11th July, 2023 when the witness was cross examined:

Q: Do you remember that I gave you cocoa farm?

A: Yes.

Q: Did I pledge the said farm or sold it to you?

A: It was a pledge.

The above was an admission by the DW2. If the disputed farmland which had already been shared between the Plaintiff and his late father's family and he has pledged his own to the DW2 then on what basis did the said John Amoah conclude that the farm land had been sold to the witness and so he negotiated and redeemed the farmland without recourse to the Plaintiff.

The entire evidence of the DW2 (witness statement) and the cross examination corroborates the Plaintiff.

It is trite that where the evidence of an opponent corroborates the evidence of the opposite party and that opponent remain uncorroborated, the Court is bound to accept the corroborated evidence. See the case of **AGYEIWAH VRS. P&T CORPORATION [2007-2009] 2 SCGLR 985.**

From the evidence on record, find the evidence of the Plaintiff more probable than that of the Defendants and for that matter I then find that the disputed farmland was pledged out and not sold to anyone.

On possession, until the Defendants entered the disputed farmland, the person who was in possession was Emmanuel Nkansah who had been there because of the pledge between him and the Plaintiff and so the 2nd Defendant's late brother had no basis to have redeemed the disputed

farmland from Emmanuel Nkansah (DW2) without the knowledge and consent of the Plaintiff.

The Plaintiff having pledged the disputed farmland to the said DW2 he was exercising acts of ownership.

I therefore find and hold that disputed farmland belongs to the Plaintiff.

According to the Plaintiff, the Defendants have demarcated his farmland into building plots and granted same to people who are developing same.

On the totality of the evidence adduced by the parties and their witnesses I find the evidence of the Plaintiff and his witness more probable than its none existence.

It is for these reasons that I will dismiss relief 2 as no evidence led to prove same and grant the Plaintiff's reliefs a, c and d endorsed on his writ of summons as follows:

1. Declaration of title, ownership and recovery of possession of farmland situate, lying and being at Basingele on the Sefwi Anhwiaso Stool land and bounded by the properties of Auntie Kate, Abdulai and Koo Bornya,
2. General damages of Forty Thousand Ghana Cedis (GHS40,000.00),
3. The Defendants whether by themselves, agents, assigns, privies, workmen, family members or whatsoever called, are retrained from having anything to do with the disputed farmland.

I award cost of two Thousand Hundred Ghana Cedis (GHS2000.00) against the Defendants and in favour of the Plaintiff

SGD.
VICTORIA VERA AKONU
DISTRICT MAGISTRATE