

IN THE DISTRICT COURT HELD AT DAMBAI BEFORE HIS WORSHIP  
ALHASSAN DRAMANI, ESQ. ON FRIDAY THE 10<sup>TH</sup> DAY OF MARCH, 2023

SUIT NO. A1/01/2022

ANYARBOR SOLOMON

PLAINTIFF

VRS

NANA ATTAH FOSTER

DEFENDANT

PLAINTIFF PRESENT

DEFENDANT PRESENT

NO LEGAL REPRESENTATION FOR THE PLAINTIFF

PHILIP KWEKU ANEBO, ESQ. FOR THE DEFENDANT- ABSENT

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JUDGEMENT

The Plaintiff per his Writ of Summons issued from the registry of this Court dated 7<sup>th</sup> April, 2022 claims against the Defendant the following reliefs:

- i. Declaration of title to all that piece or parcel of land situate, lying and being at Kparekpare and bounded on the North by property of Nyamba, on the South by property of Gbeke Lukas, on the West by the main Kparekpare road and on the East by property of Yaw Y.
- ii. Recovery of possession.
- iii. General damages
- iv. Cost.
- v. Any other order(s) as the Honourable Court may deem fit

The defendant pleaded not liable to the entire claim and per his amended Statement of Defence dated 25<sup>th</sup> July, 2022 counterclaim as follows:

- a. Declaration of title and recovery of possession of the disputed land
- b. Perpetual injunction restraining the plaintiff, his agents, assigns, privies and all persons claiming through him from interfering with the disputed land in any way whatsoever.
- c. Cost.
- d. General damages for trespass.
- e. Any other order(s) that the Honourable Court may deem fit.

### **CASE OF THE PLAINTIFF**

The substance of Plaintiff's claim per his pleadings and witness statement is that, fifteen years ago he acquired the disputed land (two plots) from PW1. According to plaintiff he cleared the land, deposited some building materials and moldered blocks on the land. Plaintiff said in early 2022, he was in his house when some police officers came to inform him that the defendant had reported to them that, he, (plaintiff) has sold the defendant's land to another person. Plaintiff stated that he was consequently arrested by the police but was later granted bail.

The Plaintiff called his grantor, Nana Atore, as PW1. PW1 in his witness statement dated 25<sup>th</sup> May, 2022 indicated that he is the Chief of Kparekpare and that he and his elders alienated the disputed land to the plaintiff. PW1 added that he alienated the land to the defendant in his capacity as Chief of Kparekpare.

Thereafter the plaintiff brought his case to close.

### **DOCUMENTS EXHIBITED BY PLAINTIFF**

1. Exhibit A- Receipt of building plot dated 13<sup>th</sup> December, 2020.
2. Exhibit B- Motion on Notice for Judicial Review and affidavit in support dated 23<sup>rd</sup> June, 2015
3. Exhibit C- Extract from the National register of chiefs Volta Region.
4. Exhibit D- Coronation invitation card.
5. Exhibit E- A petition against the coronation of Nana Owusu Bedinyabe II

### **CASE OF THE DEFENDANT**

The case of the defendant as can be discern from his pleadings and witness statement is that the disputed land forms part of a vast track of his family land (Etanga Family) at Kparekpare Township. According to plaintiff his grandfather Owusu Etanga was an Adele man from Tutukpene and a hunter and in one of his hunting expeditions discovered the Kparekpare lands.

Defendant said his grandfather subsequently moved from Tutukpene and settled at the outskirts of Kparekpare at a village presently call Torgbe Akura.

Defendant stated that his grandfather cultivated a cocoa farm at the outskirts of Kparekpare and the cocoa farm is still there up till date. Defendant further stated that his grandfather extended his farming activities into the present day Kparekpare Township and beyond. Defendant said whilst his grandfather was going about his farming and

hunting activities at Kparekpare another hunter of Adele and Ntrobu descent also arrived at Kparekpare but later moved to settle and founded Dormabin. Defendant said his grandfather was again met on the Kparekpare land by an Nchumuru man who was also a hunter from Dambai by name Aborkuja. He said Aborkuja later founded the Aborkuja village which shares boundary with Kparekpare on the West.

According to defendant the boundary between his grandfather's land and the Nchumuru people is the Nanum stream which stream is still their boundary at present and to the East his grandfather share boundary with Akyem and Tutukpene. Defendant added that other people later joined his family at Kparekpare and the first person who came to join them was a Konkomba man by name Kwasi Mamenanja and his children are still living in Kparekpare and they recognized the defendant's family as the owners of the Kparekpare lands.

Defendant again stated that as time went on one Krachi man by name Okumah migrated from Krachi and settled at Naabu Akura, a Kokomba community which was established with the consent and concurrence of defendant's grandfather and family. Defendant said Naabu Akura later became known as Okumah Akura because Okumah had a passenger car and so was very popular in the area because his car was the only means of transport in the area then.

According to defendant Okumah later resettled in Kparekpare and begun to carry himself out as a chief and this brought a strained relationship between Nana Owusu Etanga and Okumah. Defendant said after the death of Nana Owusu Etanga, his son Kwabena Owusu was installed as the Chief of Kparekpare. According to defendant, Okumah, the Krachi man, died and so the Krachi people at Kparekpare wanted to install PW1 as a chief but Nana Kwabena Owusu protested alongside the Paramount Chief and people of Tutukpene and the matter went before the District Security Council of Krachi East Municipal Assembly.

Defendant said during a meeting of the council, the Krachi people explained that they only wanted to install a headman for the Krachi people living at Kparekpare and not a Chief, so they were allowed to install PW1 as the Headman.

Defendant added that all state institutions, agencies, religious bodies as well as many other individuals in Kparekpare had grants of their lands from the defendant's family, including the basic school at Kparekpare, all churches in Kparekpare including the central mosque where plaintiff's grantor (PW1) worships. Defendant stated that Nana Owusu Kwabena died in 2014 and he (defendant herein) was installed as the chief of Kparekpare. Defendant further stated that all lands sharing boundaries with the disputed land were granted by defendant's family.

The defendant said all tenant farmers in Kparekpare recognize him as the chief of Kparekpare and they bring him farm produce yearly in recognition of his ownership of the land and that plaintiff is one of such tenant farmers who observe this yearly payment of farm produce (yam). Defendant again stated that the plaintiff came to him for a grant of the disputed land so he asked plaintiff to come and pay some money for drinks and also brought a Town planner to demarcate the land for the plaintiff and that the Town planner has actually completed his work.

Defendant said he was waiting on the plaintiff to come and make payment before his allocation document will be given to him but to his utmost surprise he was served with a writ by the plaintiff. Defendant stated that he also granted portions of the Kparekpare land to MTN Ghana limited to erect a telecommunication mast without any challenge from anyone let alone the plaintiff's lessor. Defendant said PW1 has wrongfully sold portions of defendant's family land to some individuals and all such lands have been reclaimed by him.

Defendant added that plaintiff's lessor, some time ago fell teak trees on a portion of the land he granted to the basic school and he seized the wood. According to defendant the

plaintiff's grantor (PW1) is not a native of Kparekpare and has no interest or title whatsoever in any land on Kparekpare soil and thus any purported grant of any portion of Kparekpare land to plaintiff was wrongful and plaintiff can therefore not derive any valid title from such illegal act by PW1.

In support of his case plaintiff called as DW1 Nlipa John.

DW1 testified per his witness statement dated 08<sup>th</sup> September, 2022 that the disputed land belongs to the defendant. According to DW1 so many years ago he and his senior brother by name Naabu were granted permission by the defendant's grandfather Nana Owusu Etanga to settle on a piece of land near Kparekpare. DW1 said after a while other people joined them on the land and the village was consequently named after his brother, Naabu. According to DW1 after staying in Naabu Akura for three years they were joined by one Krachi Man by name Okumah. PW1 stated that before they allowed Okumah to settle in Naabu Akura with them, his senior brother took Okumah to Nana Owusu Etanga at Kparekpare to introduce Okumah to Etanga and to seek his permission before Okumah was made to settle with them at Naabu Akura. DW1 further stated that Okumah had a commercial vehicle at the time and this made him popular in the village so the name of the village was gradually changed from Naabu Akura to Okumah Akura. DW1 said Okumah later moved from Okumah Akura to settle at Kparekpare Town. He said at the time Nana Owusu Etanga was still the Chief of Kparekpare. DW1 stated that whilst Okumah was living in Kparekpare he was made the Headman for the Krachi people in Kparekpare and after his death one Krachi man by name Anthony came to install Atore (PW1) as the new Headman of the people of Krachi, in Kparekpare, thereafter, Atore begun to carry himself out as the chief of Kparekpare and trying to claim ownership of lands in the area.

The defendant also caused to be filed the witnessed statement of DW2 (Kwasi Mamenanja). In the said witness statement DW2 corroborated the evidence of defendant and DW1. However, DW1 was not called to be cross examined by plaintiff. In the circumstances the evidence of DW2 will not be accorded any weight.

Thereafter the defendant close his case

#### **EXHIBITES FILED BY DEFENDANT**

1. Exhibit 1: Official Certificate of Search Results.
2. Exhibit 2: Site Plan for Etanga Owusu family
3. Exhibit 3: Invitation letter for installation of Krachi Headman at Kparekpare dated August, 2021.
4. Exhibit 4: Leasehold Agreement between Nana Kwabena Owusu and the Registered Trustees of the Presbyterian Church of Ghana dated 17<sup>th</sup> March, 2010.
5. Exhibit 5: Land receipt issued by Nana Owusu Attah III to Maxwell Amanyoo dated 5<sup>h</sup> February, 2022.
6. Exhibit 6: Land receipt issued by Nana Owusu Attah III to Mr Dordoe Eric and Mad. Ameyo Salomey.
7. Exhibit 7: Land receipt issued by Nana Owusu Attah III to Mr Mukaila Amadu.

The legal issues to be determined in this suit in the respectful view of this court are:

- (i) Whether the plaintiff has capacity to institute the instant action
- (ii) Whether the Plaintiff has valid title to the parcel of land in dispute.
- (iii) Whether defendant is entitled to his counterclaim.

In every civil action, the general rule is that the burden of proof rests upon the party, whether plaintiff or defendant, who substantially asserts the affirmative of his case. In

the case of Lamprey alias Nkpa v. Fanyie & Others [1989-90] 1 GLR pgs 286, the Supreme Court held that:

“On general principles, it was the duty of a plaintiff to prove his case. However, when on a particular issue he had led some evidence, then the burden will shift to the defendant to lead sufficient evidence to tip the scale in his favour”.

This is clearly covered in **section 14 of the Evidence Act, 1975 (NRCD 323)**.

In the case of Ackah v. Pergah Transport Ltd & Ors [2010] SCGLR 728 the Supreme Court held as follows:

“It is a basic principle of the law on evidence that a party who bears the burden of proof is to produce the required evidence of the facts in issue that has the quality of credibility short of which his claim may fail. The method of producing evidence is varied and it includes the testimonies of the party and material witnesses, admissible hearsay, documentary and things (often described as real evidence), without which the party might not succeed to establish the requisite degree of credibility concerning a fact in the mind of the court or tribunal of fact such as a jury .....

In the instant case the Defendant having endorsed in his pleadings a counterclaim also carry the burden of proving the facts alleged in his defence and counterclaim to the same degree as the burden the Plaintiff carries in proving his claim against the Defendant.

The burden of producing evidence as well as the burden of persuasion in this case is therefore on both the Plaintiff and the Defendant and the statutory standard is one on the “preponderance of the probabilities” by virtue of **section 12(1) of the Evidence Act** which requires evidence to “that degree of certainty and belief in the mind of the tribunal of fact or the court by which it is convinced that the existence of a fact is more probable than its nonexistence”.

The first issue to be determined by this court is whether the plaintiff is clothed with capacity to bring this suit.

The law is that the issue of capacity can be raised at any time during the proceedings even after judgment during appeal. The question of capacity can either be raised by a party or the court suo moto.

In the case of **Kasseke Akoto Dugbatey Sappor & 2 Others Vrs. Very Rev. Solomon Dugbatey Sappor & Others Civil Appeal No. J4/46/2020** dated 13<sup>th</sup> January, 2021, Her Ladyship Prof. Mensah Bonsu (Mrs.) JSC stated as follows:

“Capacity to maintain the action remains a cardinal hurdle that must be jumped if either party is to remain in the case. It is for good reason that order 2(4) of the High Court (Civil Procedure) Rules 2004 (C.I. 47) as amended insists on the capacity of the plaintiff being endorsed in the writ before it becomes a competent writ....Black’s Law Dictionary defines “capacity thus is one’s ability to appear in Court to make a claim hinges on whether one is recognised in law as having sufficient interest in any matter to seek a hearing on any particular issue. This “sufficient interest” must remain throughout the life of the case or one’s legal ability to stay connected with a case making its way through the Courts would be lost... the authorities agree on one point. Capacity is so fundamental that it can be raised at any time. In **Evelyn Offei Vrs Yaw Asamoah Odehye Kwaku Gyapong**, supra, Appau JSC on the issue of capacity, stated thus: In our consideration of appeal, we found that the issue of capacity was not properly addressed by the two Lower Courts.”

In the case of **Nii Kpobi Tetteh Tsuru II & 2 Others Vrs Agri-Cattle & 4 others Civil Appeal No. J4/15/2019** delivered on 18<sup>th</sup> March, 2020 the Honourable Court held as follows:

“The law is trite, capacity is a fundamental and crucial matter that affects the very root of a suit and for that matter it can be raised at any time even after judgment on appeal. The issue is so fundamental that when it is raised at an early stage of the proceedings a Court mindful in doing justice ought to determine that issue before further proceedings are taken to determine the merits of the case. Thus a plaintiff whose capacity is challenged needs to adduce credible evidence at the earliest opportunity to satisfy the Court that he had the requisite capacity to invoke the jurisdiction of the Court. If this is not done the entire proceedings founded on an action by the plaintiff without capacity would be nullified should the fact of non-capacity be proved.”

Before instituting this action the plaintiff had a duty to ensure that he had the requisite capacity to issue the writ and to maintain same throughout the entire proceedings.

Order 9 r (1) of the District Court Rules C.I. 59 provides that:

“If a plaintiff sues, or a defendant is sued in a representative capacity, this fact shall be stated on the writ.

On the face of plaintiff’s writ dated 7<sup>th</sup> April, 2022 plaintiff brought the instant action in his personal capacity and in his personal name.

In his pleadings and witness statement the plaintiff stated that he acquired the disputed land from PW1 some fifteen years ago and recently cleared the land and moulded blocks on it to begin with the development when the defendant caused his arrest. To buttress his point that he indeed acquired the disputed land, the plaintiff exhibited the land purchase receipt (Exhibit A) purportedly issued to him by his lessor (PW1). For the purpose of clarity the said Exhibit A is extracted below:

**“KPAREKPARE STOOL LANDS**

**KRACHI TRADITIONAL AREA**

**RECEIPT OF BUILDING PLOT**

**I NANA AKWASI ATORE** and elders of Kparekpare in the Krachi East Municipal of Oti Region

Have on 13<sup>th</sup> day of December 2022 released a Building plot of land to one Anyabour K. Richard of Dambai.

The land which lies at Kparekpare Central measured 100\*140

An amount of ..... was paid.

The above stated receipt was signed by Nana Akwasi Atore I (“Chief of Kparekpare”), the recipient (Anyabour K. Richard) and witnessed by one person on the part of the recipient and two witnesses on the part of Nana Akwasi Atore (Lessor).

Plaintiff’s exhibit A above is what has raised the red flag on his capacity. Exhibit A clearly states that the disputed land was acquired by one Anyabour K. Richard in the year 2020 contrary to plaintiff’s claim that he acquired the disputed land fifteen (15) years ago. There is nowhere either on plaintiff’s writ, pleadings or even witness statement in which he stated that he was suing on behalf of Anyabour K. Richard or suing as a beneficiary of Anyabour K. Richard. The two names (Anyabour K. Richard and Anyarbor Solomon, (plaintiff) are distinct and there is absolutely no confusion between the two names.

Further when plaintiff came under cross examination by defendant’s counsel on 8<sup>th</sup> December, 2022, the following took place:

Q. Your case is that you acquired the land from Nana Atore fifteen (15) years ago, is that correct.

A. Yes.

Q. When the disputed land was given to you by Nana Atore he issued you with a receipt, not so.

A. That is correct.

Q. And that is the same receipt you attached to your witness statement before this Court marked as exhibit A, not so.

A. That is true.

Q. The said receipt was issued to you on 13<sup>th</sup> December, 2020 is that correct too.

A. I cannot remember the exact date but that could be true.

The above encounter dealt a fatal blow to plaintiff's case and further exposes the fundamental weakness of his case and made patent his lack of capacity.

The exhibit "A" (supra) is the gravamen of plaintiff's case. However as established earlier, the exhibit does not bear his name at all but that of Anyabour K. Richard. It is therefore impossible for plaintiff to mount a claim on the basis that he is the owner of the disputed land when his own exhibit states otherwise. It is palpably clear from the record that plaintiff was not the one who acquired the disputed land from Nana Atore, neither did he adduced any evidence to show that he has any valid interest in the same. Plaintiff can therefore not mount a claim on a transaction he was not a party to or has any interest in.

From the evidence on record I find that the disputed land was acquired by Anyabour K. Richard from DW1 in December, 2020. Even though DW1 indicated that he sold the disputed land to plaintiff, the evidence on record does not support this assertion. It is therefore the respectful view of this court that if there was any land transaction between the plaintiff herein and PW1 at all, then it was not about the disputed land.

From the foregoing I hereby hold that the plaintiff herein **Anyarbor Solomon** lacks capacity to institute the present action against the defendant. In the circumstances the plaintiff's entire claim is accordingly dismissed.

Having found that plaintiff lack capacity to institute the instant action against the defendant, issue two (supra) which is “whether the plaintiff is entitle to declaration of title to the disputed land” is therefore moot and I will not waste precious time on this issue.

Furthermore, since I have already found that the plaintiff lacks capacity to institute this suit, it should also naturally mean that he lacks capacity to defend defendant’s counterclaim because he has no interest in the disputed land.

However, there is sufficient evidence on record showing that plaintiff is on the disputed land carrying out and/or preparing to carry out development activities thus being a trespasser. I therefore find it prudent to make a determination on defendant’s counter claim in order to give effect to Order **1 r (1) and (2) of the District Court Rules (2009) C.I. 59.**

On the basis of the above, I shall proceed to deal with issue three- “whether defendant is entitle to his counter claim” and whether plaintiff has trespassed on the disputed land.

It is important to note that the issues to be determined in this issue are both factual and legal. The nature of the factual issues from the pleadings and witness statements of the parties particularly from that of the defendant is mostly traditional. I shall hence allude to the law on oral and traditional evidence, generally and consider the burden of proof of the parties as prescribed by law in order to determine the issue one way or the other within the context of the evidence adduced.

The principle of law is that; “it is no derogation of evidence that it is oral and on traditional history. It is admissible and can be relied upon to discharge any onus to the standard prescribed by the law”. This position of the law has been stated in a number of cases among others as follows:

In **Achoro & Anor v. Akanfela & Anor [1996-97] SCGLR 209**, the Supreme Court stated that:

“if the evidence led by both parties was traditional, the best way of evaluating traditional evidence is to test the authority of the rival versions against the background of positive and recent acts.....”

In the case of **Commissioner of Land v. Adagun (1937) 3 WACA 206** Oral evidence is admissible and can be relied upon to discharge onus of proof if it is supported by the evidence of living people of facts within their knowledge”. This was relied on by our court in the case of **In Re Adjancote Acquisition; Klu v. Agyeman II [1982–83] GLR 212**.

The criteria set out by the courts through case law are the facts in recent years as established by the evidence, Recent Acts, Possession, and Accepted facts.

The above case affirmed the case of **Adjeibi-Kojo v. Bonsie & Anor 3 WALR 257 PC** which held per Lord Denning at page 260 that:

“The best way is to test the traditional history by reference to facts in recent years as established by evidence and by seeing which of the two competing histories is the most probable”.

PW1 in his witness statement stated that he is the chief of Kparekpare. PW1 further stated as follow: “the capacity which I have to alienate land to the plaintiff is based on the MOTION ON NOTICE FOR JUDICIAL REVIEW ORDER 55, C.I. 47 OF 2004” (Exhibit B). PW1 did not indicate how he became owner of the disputed land neither did he give his root of title. In my view however, it can be inferred from PW1’s evidence that he is

claiming ownership of the subject matter of the suit on the basis that he is the “chief of Kparekpare.” And thus as the chief of Kparekpare all the Kparekpare lands are under his control and care. This view is supported and resonates with PW1’s exhibits attached to his witness statement in which he sought to establish the fact that he is the rightful and recognized chief of Kparekpare. Regrettably however there is little or no evidence at all on record linking ownership of the disputed land to the position of chieftaincy

Exhibit “B” as referred to by PW1 is a motion for judicial review in the nature of prohibition and injunction dated 23<sup>rd</sup> June, 2015. The motion is entitled The Republic Vrs Nana Bebenyabe II a.k.a Bedinyaba, Ex-parte Nana Akwasi Atore. However there is no evidence on record that this motion which was to be filed and moved at the High Court Hohoe, was filed at all. In fact during cross examination of PW1 by counsel for the defendant, he admitted that exhibit B was never moved. In the accompanying affidavit to the motion (supra) the applicant therein (PW1 herein) described himself as the Odikro and Chief of Kparekpare. His application was hence seeking to prohibit and place an injunction against the respondent therein, whom the applicant said was holding himself out as Chief of Kparekpare.

From the evidence on record I failed to see how exhibit B gave capacity to PW1 to deal with the disputed land and/or how exhibit B is linked to the defendant, Nana Atta Foster.

The defendant on his part told the court that the disputed land is part of a vast track of land belonging to the Etanga Owusu family of Kparekpare. Defendant said his grandfather Owusu Etanga from Tutukpene who was a hunter discovered the land during his hunting expedition and consequently moved from Tutukpene to settle on one part and also cultivated a cocoa farm on another portion. Defendant said the cocoa farm cultivated by his grandfather exist till date. The Defendant further stated that he shares

boundary with Aborkuja village on the West, Nchumuru people towards Yabram and on the East Akyem and Tutukpene. DW1 Nlipa John corroborated plaintiff's evidence. According to DW1 he and his senior brother were among the first people to settle on Kparekpare land with the consent of defendant's family. He said all other persons who later came to settle on Kparekpare land including PW1's successor (Okumah) the then Headman of the Krachi people at Kparekpare were granted permission by defendant's family. DW1 said he is aware that the defendant is the one who granted all lands surrounding the disputed land to other tenants.

The defendant also mentioned that his family has been in undisturbed possession of Kparekpare lands since the land was discovered by his grandfather, and over the years have alienated the land to others. The defendant attached as exhibit 1 an official certificate search results dated 11<sup>th</sup> April, 2022 which stated that "the entire site is the subject matter of Statutory Declaration dated 4<sup>th</sup> November, 2022 by Etanga Owusu family with Deed No. OT 111/2021 and document no. RV 243/2021. Exhibit 2 is the site plan of the entire land as described by the defendant. Defendant's Exhibit 3 is a letter dated August 2001 by the Paramount Chief of the Krachi Traditional Area inviting the Paramount Chief of Tutukpene to witness and assist in the installation of a Headman for the Krachi Community at Kparekpare.

To further cement his position that he and his family have been in undisturbed possession of the Kparekpare lands the defendant exhibited as Exhibit 4 a lease agreement between his predecessor Nana Kwabena Owusu and the Registered Trustees of the Presbyterian Church of Ghana dated 17<sup>th</sup> March, 2010 as well as receipts indicating how the defendant has over the period alienated lands to persons for building purposes. The said receipts are exhibited as exhibits 5-7.

The evidence on record is that the defendant has also leased out lands for school buildings, mosques, church, mast of MTN Ghana limited etc.

The claim by the defendant that he and his family (the Etanga) family have dealt with the Kparekpare lands in varied ways and exhibited overt acts of possession as enumerated above without any hindrance or challenge was neither disputed nor discredited by plaintiff and his witness.

When PW1 came under cross examination by defendant's counsel on the 8<sup>th</sup> of December, 2022 the following transpired

Q. Are you aware that there is a Presbyterian basic school and church in Kparekpare

A. Yes

Q. Were you the one who granted the land for the above stated school and church buildings.

A. No.

Q. Are you aware that there is an MTN mast situated at the Kparekpare Township.

A. Yes.

Q. Are you the one who granted the land to MTN to erect the mast.

A. The land was granted by the people who live in that area.

Q. I put it to you that it was the defendant who granted MTN the land to erect the mast.

A. I don't know anything about that.

Q. I again put it to you that it was the defendant's predecessor Nana Owusu Etanga who granted the Presbyterian Church the land to establish the school and the church.

A. I gave the Presby Church the land.

Q. Do you know that there are three mosques at Kparekpare at the moment.

A. I know of only one mosque.

Q. So are you telling this court that as the chief of Kparekpare you don't know that there are three mosque in Kparekpare.

A. I know of only one mosque.

Q. Were you the one who granted the land for the construction of the mosque you are talking about.

A. No

Q. I put it to you that it was defendant's predecessor who granted the land for the mosque you just talked about to be constructed.

A. I don't know.

Q. I again put it to you that you are only the Headman for the Krachi people at Kparekpare and not a chief

A. It is not true.

Q. I further put it to you that as a Krachi man you are only a settler and does not own any piece of land at Kparekpare and that is why you know nothing about the Kparekpare land.

A. That is not true, I own land at Kparekpare.

The cross examination above confirms defendant's claim that his predecessor as well as him have exercise acts of possession over the entire land at Kparekpare Township. It further reveals that PW1 is in consistent, unreliable and unbelievable witness. On one hand PW1 indicated that he did not grant the land to the Presby Church for their church building and on another hand he claims he was the one who granted the land to the

church. It is trite principle of law that the evidence of a witness who is inconsistent and gives conflicting evidence should not be accorded any weight. The demeanour and conduct of PW1 resonates with defence counsel's view that PW1 has no knowledge of the Kparekpare land. PW1 in answering questions from counsel answers the question without listening to the question in full and reluctant in giving adverse testimony.

The principle of facts in recent years supporting a party's case was also established in the case of **Adwubeng v. Domfeh [1996-97] SCGLR 660** where the Supreme Court held at holding 4 that:

"Where it is difficult, on the basis of traditional evidence to make a finding as to which of the ancestors of the parties was first to settle on the disputed land, the recommended approach was to have recourse to facts in recent years as established by the evidence".

The evidence to look out for in recent facts or acts has been stated in the case of **Hilodjie & Anor v. George [2005-06] SCGLR 974** as follows:

"The clearly discernible principle is that in case of this nature the most satisfactory contemporary facts that a court should look out for are undisturbed overt acts of ownership or possession exercised over the disputed subject matter".

Also, in the case of **In Re: Adjancote Acquisition; Klu v. Agyeman** (supra), the court held that:

"(vi) where the admission of one party established that the other party had been in long undisturbed possession and occupation of the disputed land, the party making the admission assumed the onus to prove that such possession was inconsistent with ownership. The law was that such a person in possession and occupation was entitled to

the protection of the law against the whole world except the true owner or someone who could prove a better title”.

The following cross examination by plaintiff on defendant on 26<sup>th</sup> January, 2023 further supports defendant’s claim that he has exercise acts of possession over the Kparekpare lands which the disputed land forms part of.

Q. Do you remember that PW1 gave a piece of land at Kparekpare to a certain Ewe woman and you confronted the woman and the matter was brought before this court.

A. Yes, I remember, the said woman brought me to court because my boys poured her water away whilst she was trying to build on my land. The court fine me for causing damage. That case had nothing to do with ownership of the land but causing damage.

Q. So what was the said woman using the water for.

A. As I said earlier she was trying to use it to build on my land and my boys poured the water away.

Q. What wrong did the woman commit that your boys poured his water away.

A. The land on which she was trying to build on belongs to me and she was trying to build on it without my permission and so my boys stopped her. But I will like to add that the above stated Ewe woman later came to plead with me and I regularized her stay on the land and granted her the permission to continue with her building project. The woman’s building is not far from the disputed land.

The above simply confirms that the defendant has consistently fought, resisted or challenged anyone who trespassed on any portion of lands in Kparekpare and has

asserted his acts of ownership over the land. No wonder even the plaintiff is aware of this fact.

The undisputable evidence on record is that plaintiff is a tenant farmer on Kparekpare land. Defendant claim that plaintiff atone tenancy to him for being a tenant farmer on Kparekpare land but plaintiff has refuted this claim.

Defendant has further argued that all tenant farmers on Kparekpare lands including the plaintiff atone tenancy to him and thus present to him yam and other food products at the end of each farming season in recognition of his ownership of the land. During cross examination of plaintiff he admitted presenting yams to the defendant on a number of occasions but was quick to add that the defendant begged him for the yam and that he was only being charitable.

The above piece of evidence of the plaintiff is quite interesting. It is significant to state that at paragraph two of his summary of subject matter filed on 07<sup>th</sup> April, 2022 the plaintiff categorically stated that defendant is the chief of Kparekpare, if the plaintiff's statement in his summary of evidence is indeed the case, I find it most improbable for the defendant who is the chief of Kparekpare to beg for yam from the plaintiff, (his subject), not only once but on several occasions and for the plaintiff to have yielded to this persistent acts of begging for alms by the defendant. I find the evidence of the defendant that the plaintiff is a tenant farmer on his land to be more convincing and probable than plaintiff's claim (supra).

For the foregoing I find that defendant and the Etanga family has exercise overt acts of ownership over the vast track of land in Kparekpare which track of land the disputed land forms part of.

It is on the strength of the authorities as applied to the totality of the evidence adduced in this case that I found the evidence of the defendant as convincing and reliable. I find the Defendant's testimony to be more coherent and believable than the Plaintiff and his witness.

In conclusion therefore I hereby grant defendant's counter claim against the plaintiff as follows:

1. Title in the two plots of land situate, lying and being at Kparekpare central, bounded on the North by property of Nyamba, bounded on the South by property of Gbeka Lukas, On the West by the main road and on the East by property of Yaw Y is declared in favour of the defendant.
2. Defendant is to recover possession of the above stated piece of land from the plaintiff.
3. The plaintiff, his assigns, agents, privies, workmen and whosoever that claim through him are hereby perpetually enjoined from having anything to do with the subject matter of this suit or interfering with the defendant's quiet enjoyment of the above stated parcel of land.
4. Damages of GH¢1000.00 is awarded in favour of defendant.
5. Cost of GH¢2000.00 is awarded against plaintiff.

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**H/W ALHASSAN DRAMANI, ESQ.**

**DISTRICT MAGISTRATE**

**10<sup>TH</sup> MARCH, 2023.**