

**IN THE DISTRICT COURT 2, TAMALE HELD ON MONDAY 18TH SEPTEMBER, 2023
BEFORE HIS WORSHIP D. ANNAN ESQ.**

SUIT NO. A1/7/23

BETWEEN

ADAM MUTALA

-

PLAINTIFF

AND

MOHAMMED AYANA

-

DEFENDANT

JUDGMENT

INTRODUCTION

1. This judgment relates to land.
2. This case began with three (3) plaintiffs instituting an action against three (3) defendants. By way of alternative dispute resolution, two (2) of the plaintiffs and two (2) of the defendants were able to settle and their names struck out. Regrettably, the 2nd plaintiff and 2nd defendant therein could not resolve their differences. Accordingly, counsel for plaintiff herein caused for the writ to be amended.
3. Per the amended writ filed on 20th March, 2023, the plaintiff seeks against the defendant the following:
 - a. Declaration that plaintiff is the owner of all that piece or parcel of land known as Plot No. 170 situate and lying at Young-Duuni Dabogshee

Residential Area Block 1 and bounded by Plot Nos. 169, 171 and 172 and an access road.

- b. An order of mandatory injunction against the defendant to pull down or remove the structures or materials erected or placed on plaintiff's aforesaid plot.
 - c. An order of perpetual injunction restraining the defendant, his agents, servants, assigns or persons claiming through him from interfering in whatever manner with the plaintiff's possession, ownership and use of his plot of land as described herein above.
 - d. Recovery of possession.
 - e. Damages against the defendant for trespass to the land.
 - f. Costs.
4. The defendant was duly served with the amended writ via substituted service. Despite due service on defendant, he failed to attend court or filed any response to plaintiff's claim. Since this case regards land, the court on 30th March, 2023 directed the plaintiff to file his witness statement in support of his case of which same was filed and served on the defendant. The suit was also scheduled for hearing. In all these, the defendant failed to attend court or filed any process. I shall deal with defendant's failure to attend court or file any process later in this judgment.

PLAINTIFF'S CASE

5. According to the plaintiff, he initially acquired Plot No. 103, Block I at Dabogshee Residential Area on 16th June, 2016. This plot, however, was issued in her mother's name. A copy was tendered and marked as Exhibit A. Thereafter, a rezoning was done and the Dabogshee Skin called all lessees to submit their old allocation papers for new ones. Due to this, plaintiff then presented Exhibit A and a new allocation with Plot

No. 170 Block I, Dabogshee Residential Area was issued. He tendered in a copy and same was marked as Exhibit B. Plaintiff narrated that within the last quarter of 2022, the defendant laid claims to the said plot and had even started a foundation thereon. He averred that he reported the matter to the Dabogshee Skin of which the defendant was invited, but the defendant refused to honour the invitation. Plaintiff maintained that defendant has no title or interest in the land. He contended that the defendant will not stop his encroachment or pull down the structure raised, unless compelled by this court. Hence, his present claim.

BURDEN OF PROOF AND ANALYSIS OF PLAINTIFF'S CLAIM

6. As earlier pointed out, the defendant was duly served but he failed to attend court or filed any process. The law regarding the defendant's inaction is that where a party fails to appear in court after due service on him, he is said to have deliberately failed to take advantage of the opportunity given him to be heard. The *audi alteram partem* rule cannot be said to have been breached. The court is entitled to proceed with the trial to conclusion and make deductions, draw conclusions or make findings on the basis of the evidence adduced at the trial, see the cases of **In re West Coast Dyeing Industry Limited: Adams v Tandoh [1984-86] 2 GLR 561, CA** and **Ankumah v. City Investment Co. Ltd. [2007-2008] 1 SCGLR 1068**. See also the case of **Republic v. High Court (Fast Track Division); Ex-parte State Housing Co. Ltd. (No. 2) Koranten-Amoako Interested Party, [2009] SCGLR 185** where Wood JSC (as she then was) stated authoritatively at page 190 as follows:-

“A party who disables himself or herself from being heard in any proceedings cannot later turn round and accuse an adjudicator of having breached the rules of natural justice.”

7. The law is also that where plaintiff has endorsed on his writ a declaration of title to land, the plaintiff must establish by positive evidence the identity and limits of the land which he claims. The authorities are legion on this principle: see **Asante-Appiah v Amponsah @ Mansa [2009] SCGLR 90 @ 98**, **Nii Tackie Amoah VI v Nii Amarah Okine & Ors. [2014] DLSC 2910**, **Nene Narh Matti & 2 Ors. v Osei Godwin Teye & Samuel L. Ayortey & 2 Ors. v Osei Godwin Teye (Consolidated) (2017) Suit No. J4/13/2017, Unreported dated 22/11/17, SC**, just to mention a few. The Supreme Court, in the case of **Nortey v. African Institute of Journalism and Communication [2013-2014] 1 SCGLR 703** held however that such a description of the land does not have to be mathematically certain or exact. Failing which, the claimant must lose, see the cases of **Kodilinye v Odu [1935] 2 WACA 336** and **Anane v. Donkor [1965] GLR 188**. Further, the plaintiff is to prove on the balance of probabilities that he is entitled to that relief or his claim, see ss. 11(4) and 12(1) and (2) of Evidence Act, 1975 (NRCD 323).
8. Having heard the plaintiff under oath and without any challenge from the defendant, I shall proceed as appropriate, see **Ex-parte State Housing Co. Ltd. (No. 2) (supra)**.
9. From the evidence, Exhibit B is an allocation paper from the Dabogshee Skin to the plaintiff herein, dated 3rd August, 2021. Exhibit B makes reference to an attached site plan. However, the said site plan was not attached or tendered. Despite the non-tendering of the said site plan, I find that the referred land is described as Plot No. 170 Young-Duuni Dabogshee Residential Area Block 1, bounded by Plot Nos. 169, 171 and 172 and an access road. It is also clear from Exhibit B that the plot is in the name of the plaintiff. To this effect, I hold that the plaintiff has proven the boundaries of his land, see **Nortey v. African Institute of Journalism and Communication (supra)**. Lastly, it is not disputed that the defendant has not trespassed onto plaintiff's land. I find that

the defendant has encroached onto plaintiff's land by raising a foundation structure on same.

10. Based on the above, I hold that the plaintiff has been able to prove his case on the balance of probabilities to which I shall give effect to his claim.

CONCLUSION

11. In sum, I hereby enter judgment in favour of the plaintiff as follows:

- a. I hereby declare that plaintiff is the owner of all that piece or parcel of land known as Plot No. 170 situate and lying at Young-Duuni Dabogshee Residential Area Block 1 and bounded by Plot Nos. 169, 171 and 172 and an access road.
- b. The defendant to pull down or remove the structures or materials he has erected or placed on plaintiff's aforesaid plot. Further, the plaintiff is at liberty to recover possession of same.
- c. The defendant, his agents, servants, assigns, or persons claiming through him are perpetually restrained from interfering in whatever manner with the plaintiff's possession, ownership and use of his land as described herein.
- d. Damages against the defendant for trespass to the land is assessed at GHS5,000.00.
- e. Costs of GHS5,000.00 is awarded in favour of the plaintiff.

H/W D. ANNAN ESQ.

[MAGISTRATE]

SYLVESTER ISANG ESQ., WITH LAMBONG B. SAMPSON ESQ., FOR THE PLAINTIFF

References:

1. ss. 11(4) and 12(1) and (2) of Evidence Act, 1975 (NRCD 323).
2. *In re West Coast Dyeing Industry Limited: Adams v Tandoh* [1984-86] 2 GLR 561, CA
3. *Ankumah v. City Investment Co. Ltd.* [2007-2008] 1 SCGLR 1068
4. *Republic v. High Court (Fast Track Division); Ex-parte State Housing Co. Ltd. (No. 2) Koranten-Amoako Interested Party*, [2009] SCGLR 185
5. *Asante-Appiah v Amponsah @ Mansa* [2009] SCGLR 90 @ 98
6. *Nii Tackie Amoah VI v Nii Amarh Okine & Ors.* [2014] DLSC 2910
7. *Nene Narh Matti & 2 Ors. v Osei Godwin Teye & Samuel L. Ayortey & 2 Ors. v Osei Godwin Teye (Consolidated)* (2017) Suit No. J4/13/2017, Unreported dated 22/11/17, SC
8. *Nortey v. African Institute of Journalism and Communication* [2013-2014] 1 SCGLR 703
9. *Kodilinye v Odu* [1935] 2 WACA 336
10. *Anane v. Donkor* [1965] GLR 188