

**IN THE DISTRICT COURT, KENYASI HELD ON TUESDAY THE 20<sup>TH</sup>  
DAY OF JUNE, 2023 BEFORE HIS WORSHIP CLEMENT KWASI  
ASOMAH AS MAGISTRATE**

**BR/KS/A1/10/2023**

**KASIM TIJANI OF KOFORIDUA FOR HIMSELF AND ON BEHALF OF  
HIS FATHER ALHAJI TIJANI (DECEASED)**

**VRS**

- 1. KWAKU KANKAM**
- 2. ADWOA KONTIRE**

**JUDGMENT**

Plaintiff on the 10/01/23 was issued out of the Registry of this Court, a writ of civil summons claiming an amount of Gh¢40,000 from the defendant.

To this relief the 1<sup>st</sup> defendant admitted Gh¢3,100.00 out of the GH¢40,000. But the 2<sup>nd</sup> defendant denied liability.

In the interest of justice, the parties were given a hearing.

**THE PLAINTIFF'S CASE**

Beside himself, the plaintiff, the plaintiff called one witness in support of his case.

According to the plaintiff in the year 2012 the 1<sup>st</sup> defendant sold a 7 arage land at the cost of Gh¢3100 to he and his father. Plaintiff stated that upon its acquisition they handed over same to his brother Ibrahim Issaka to work on but 4 months after he had cultivated crops on the land, a nephew to the 1<sup>st</sup> defendant threatened Ibrahim to give vacant possession else he would kill him so he left the land.

Plaintiff stated that he went and lodged a complaint to the chief of the area but the 1<sup>st</sup> defendant failed to avail himself and was nowhere to be found until he resurfaced recently so he was arrested but later instituted the instant action.

The plaintiff under cross examination admitted that a year after he had bought the land the 1<sup>st</sup> defendant's brother refunded GH¢3,000.00 to him but he rejected the money.

He admitted he had never met the 2<sup>nd</sup> defendant before but maintained that he spoke to her on phone.

PW1. Issaka Ibrahim's evidence was on all fours with the evidence of the plaintiff PW1 admitted under cross examination that the 1<sup>st</sup> defendant's brother refunded the money to him but he rejected it because he was only a caretaker. He admitted that the 2<sup>nd</sup> defendant and her brothers protested about the sale of the land. Suffice it to say that the plaintiff closed his case after the evidence of PW1.

### **THE DEFENDANT'S CASE**

The 1<sup>st</sup> defendant testified and called two witnesses.

The evidence of the 1<sup>st</sup> defendant was that he sold a land to the plaintiff about 9 years ago but his brother said the price was on a lower side so he refunded Gh¢3000.00 to the plaintiff but he rejected it and recently instituted the instant action. The defendant said he lives In Kumasi which the plaintiff was aware so he did not go into hiding.

1<sup>st</sup> defendant admitted that the 2<sup>nd</sup> defendant was called on phone and she gave her consent to the transaction. He maintained that 2<sup>nd</sup> defendant authorized their head of family to sign on her behalf.

DW1 Kwabena Asante's evidence was that the land in issue belongs to he and his other siblings including the defendants herein.

DW 1 said they disagreed with the sale so their brother who was in USA came to Ghana and refunded the money to the plaintiff but he declined to accept so they left.

He concluded the money was refunded a year after the sale. DW1 denied the refund came 7 years after the sale of the land.

DW2 Kwame Gyan James evidence was that he was present when the refund was made According to DW2 they presented the money to plaintiff's brother who called the plaintiff in their presence and the feedback was that the plaintiff said he should not accept the money so they left.

The 1<sup>st</sup> defendant closed his case after the evidence of Dw2.

The 2<sup>nd</sup> defendant testified and called no witness.

According to the 2<sup>nd</sup> defendant it was her brother Kofi Nimo who even told her the 1<sup>st</sup> defendant had sold their land and not satisfied with that he refunded the money but the plaintiff declined to accept it. The 2<sup>nd</sup> defendant closed her case without calling a witness.

### **ISSUES**

The following issues arose for determination by this court.

1. Whether or not the land was jointly sold to the plaintiff by the defendants.#
2. Whether or not a refund was made to the plaintiff 7 years after he had purchased the land.
3. Whether or not the plaintiff is entitled to his reliefs.

### **NOW THE ISSUES**

Issues one – whether or not the land was jointly sold to the plaintiff by the Defendants.

It was the claim of the plaintiff that the land the subject matter of the instant suit was sold to him by both defendants.

The 2<sup>nd</sup> defendant vehemently denied this piece of evidence by the plaintiff and contended that she even got to know about the sale through her brother Kofi Nimo. The 1<sup>st</sup> defendant also corroborated the evidence of the plaintiff on that issue that they called the 2<sup>nd</sup> defendant and she consented to the sale it is worthy of note that exhibit A mentioned the 1<sup>st</sup> defendant as the sole vendor of the land in dispute. It was not a joint sale.

2<sup>nd</sup> defendant's name appeared on exhibit A as a witness and evidence abounds that she did not sign. The 1<sup>st</sup> defendant admitted this and said it was their head of family who signed for her at her instance which she has denied and there was no indication that he signed for the 2<sup>nd</sup> defendant. The head of family did not also testify to that effect through there was no evidence on record to show that he was not available to be called on a witness.

I am therefore of the view that the land was sold to the plaintiff solely by the defendant. Issue one is accordingly resolved in favour of the 2<sup>nd</sup> defendant that she was not a party to the sale transaction.

Issue two – whether or not the refund was made to the plaintiff 7 years after the sale of the land. It was the case of the 1<sup>st</sup> defendant that when their brother Kofi Nimo heard about the sale of their land he went and refunded

GH¢3,000.00 to the plaintiff but he declined to accept the money and that refund was made a year after the sale of the land.

This piece of evidence was corroborated by DW1 and DW2 in all material respect. The plaintiff however, contended that the refund was made 7 years after he had bought the land. Now be that as it may why didn't the 1<sup>st</sup> defendant take steps to nullify the transaction by way of an action in count to compel the plaintiff to accept his money back? He rather took over the land and kept the money as well. It is also worthy of note that the money was even less than the amount the plaintiff paid to the defendant's (1<sup>st</sup> defendant) let alone adding interest to the purchase price. Now evidence abounds that DW1 and DW2 were not present when the land was sold and 2<sup>nd</sup> defendant said she got to know about the sale when their brother Kofi Nimo called her. This means that she was also not privy to the transaction and yet all the witnesses including the 2<sup>nd</sup> defendant who were not present and did not know when the transaction took place said the refund was made a year after the sale. The question is how did they get to know about this? I am of the view that they were all schooled to sing that chorus or they were being economical with the truth. I am of the view that the plaintiff's assertion that it was 7 years after the sale is more probable than the one year claim by the defendant.

Issue three whether or not the plaintiff is entitled to his claim. The claim of the plaintiff is that the defendant should pay GH40, 000 to him because that is the current price of 7 acreage land at the area. This the defendant denied. The question is how the plaintiff arrived at that figure. The law is that he who alleges assumes the onus of proof see *FAIBI VRS STATE HOTELS* (1968) GLR 471.

In the instant case though the plaintiff quoted GH40,000 as the current price he could not adduce sufficient evidence to establish that claim. No witness from the area was called to corroborate that, that is the current price of land at the area neither did he produce any document to prove that. I am therefore of the view that the plaintiff could not prove his claim of GH 40,000.00.

That notwithstanding I think it will be unfair and unjust if the plaintiff is paid the money he paid to the defendant over 7 years ago. When the plaintiff refused to accept the refund of GH¢3,000.00, nothing prevented the defendant from taking an action in Court to compel the plaintiff to accept the money. Allowing the Defendant to keep the money and the land will amount to an unjust enrichment. Interest will therefore be calculated on the GH3100.00 at the prevailing bank lending rate from 2013 till date of payment.

In the alternative the Defendant should give back the land to plaintiff cost of GH¢1,000.00 awarded against the 1<sup>st</sup> defendant.

The action against the 2<sup>nd</sup> defendant is dismissed.

H/W CLEMENT KWASI  
ASOMAH