CORAM: IN THE NALERIGU DISTRICT COURT HELD ON, 9TH NOVEMBER 2023 BEFORE HIS WORSHIP SIMON KOFI BEDIAKO ESQ. SITTING AS MAGISTRATE.

SUIT NUMBER: NR/NG/DC/22/2023

JOHN NANTOMAH **PLAINTIFF**

V

JABUNI NANTOMAH **DEFENDANTS**

JUDGEMENT

Introduction:

The plaintiff filed the writ of summons as amended on 19th January 2023 claiming the following reliefs against the defendant:

1. Declaration of title to all that piece of land located along the Nalerigu Nursing School Road sharing boundaries with Baba Nantomah and Oscar Liwal's houses.
2. An order of the court to stop the Defendant from further interfering on the land.
3. Cost of Ten Thousand Ghana Cedis GHC10,000.00 against the Defendant.
4. Any order or orders the court may deem fit to make.

CASE OF THE PLAINTIFF:

The plaintiff's case, in summary, is that he gave a portion of his land to his brother's daughter by the name of Tani Nantomah to put a container on the same. The plaintiff avers that after Tani Nantomah had come to place the container on the land, the defendant came onto the land and drove her away. According to the plaintiff for about 5 years now, when he gives his land out to people for containers to be mounted on the land by the people at a fee, the defendant comes and drives the people away. It is based on this case that the plaintiff has sued the defendant claiming the aforementioned reliefs.

CASE OF DEFENDANT:

The defendant's case is that he did not sack or drive Tani Nantomah away from the land of the plaintiff as claimed by the plaintiff. According to the defendant, Tani Nantomah came to him in tears and informed him that the plaintiff had sacked her from a room he rented to her. It is the defendant's case that on the same day, he witnessed the husband of Tani placing a container on a land where sand had been heaped. According to the defendant, the container was planted on a piece of land which is different from what the plaintiff gave them. According to the defendant he, Baba Nantomah, and Wuni agreed that where the container was placed is part of the land which is a subject matter of litigation in court so the container should not be placed there.

ISSUES IDENTIFIED:

The following issues have been identified for determination by this Court:

1. Whether or not the plaintiff has valid title to all that piece of land located along the Nalerigu Nursing School Road sharing boundaries with Baba Nantomah and Oscar Liwal's houses?
2. Whether or not the defendant trespassed on the land the plaintiff is in possession of and sacked or drove Tani Nantomah (PW2) away from the portion of the land the plaintiff gave to her?

BURDEN OF PROOF:

Before a court decides a case one way or the other, each party to the suit must adduce evidence on the issues to be determined by the court to the standard prescribed by law. In the case of **Akrofi v Otenge and Anor [1989-90] 2 GLR 244** the venerable Adade JSC. held that:

> *"what is proof? It is no more than credible evidence of a fact in issue. This may be given by one witness; or by several witnesses; what matters is the quality of the evidence."*

The above legal position is supported by various provisions of NRCD 323, **Section 14 of the Evidence Act, 1975 (NRCD 323)** provides that:

14. Except as otherwise provided by law, unless and until it is shifted a party has the burden of persuasion as to each fact the existence or non-existence of which is essential to the claim or defence he is asserting."

This being a civil suit, the burden of producing evidence by both sides in the suit as well as the burden of persuasion is one to be determined on the preponderance of probabilities as defined by **Section 12 of the Evidence Act 1975 (NRCD 323) which stipulates as follows:**

Proof by a Preponderance of Probabilities

(1) Except as otherwise provided by law, the burden of persuasion requires proof by a preponderance of the probabilities.

(2) "Preponderance of the probabilities" means that degree of certainty of 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 non-existence.

The defendant carries the burden of proving the facts alleged in his defence to the same degree as the burden Plaintiff carries in proving his claim against defendant.

It is also trite law that for every case there is a burden of proof to be discharged and the party who bears the burden will be determined by the nature and circumstances of the case. **Sections 10 and 11(1) and (4) of the Evidence Act, 1975 (N.RC.D. 323)** provide that:

"10. Burden of Persuasion Defined

(1) For the purposes of this Act, the burden of persuasion means the obligation of a party to establish a requisite degree of belief concerning a fact in the mind of the tribunal of fact or the Court.

(2) The burden of persuasion may require a party

(a) to raise a reasonable doubt concerning the existence or non-existence of a fact, or

(b) to establish the existence or non-existence of a fact by a preponderance of the probabilities or by proof beyond a reasonable doubt.

11. Burden of Producing Evidence Defined.

(1) 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.

(4) In other circumstances the burden of producing evidence requires a party to produce sufficient evidence so that on all the evidence a reasonable mind could conclude that the existence of the fact was more probable than its non-existence.

ANALYSIS:

Issue one: Whether or not the plaintiff has valid title to all that piece of land located along the Nalerigu Nursing School Road sharing boundaries with Baba Nantomah and Oscar Liwal's houses?

In a land suit a party who seeks declaration of title to the land in question is required to prove on the preponderance of probabilities the following:

1. Identity of the land in respect of which he seeks the declaration of title,
2. His root of title to the land,
3. Mode of acquisition of the land, and
4. Various act of possession exercised over the land.

In **Yehans International Ltd. v. Martey Tsuru Family and 1 Or., (2018) JELR 68871 (SC)** Adinyira JSC held that: *"It is settled that a person claiming title has to prove: i) his root of title, ii) mode of acquisition and iii) various acts of possession exercised over the land … This can be proved by either traditional evidence or by overt acts of ownership in respect of the land in dispute. A party who relies on a derivative title must prove the title of his grantor."* See also **Mondial Veneer (Gh.) Limited v. Amuah Gyebi XV [2011] 1 SCGLR 466**.

In **Anane and Others v Donkor and Another and Another (Consolidated) [1965] GLR 188** the Supreme Court held that *"Where a court grants declaration of title to land or makes an order for injunction in respect of land, the land the subject of that declaration should be clearly identified so that an order for possession can be executed without difficulty, and also if the order for injunction is violated the person in contempt can be punished. If the boundaries of such land are not clearly established, a judgment or order of the court will be in vain. Again, a judgment for declaration of title to land should operate as res judicata to prevent the parties relitigating the same issues in respect of the identical subject-matter, but it cannot so operate unless the subject-matter thereof is clearly identified. For these reasons 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 to which he claims title with the land the subject-matter of the suit.". See also the case of

Nii Tackie Amoah VI v. Nii Armah Okine & Ors, Numo Kankam, Nii Noi Morton, Jonah Yaw Ayitey and Lands Commission (2014) JELR 68665 (SC).

The plaintiff described the land which he prays the court to declare title in his favour as all that piece of land located along the Nalerigu Nursing School Road sharing boundaries with Baba Nantomah and Oscar Liwal's houses. The court after the conclusion of trial visited the described land with the parties to verify the boundaries. In the case of **Nortey v. African Institute of**

Journalism and Communication [2013-2014] 1 SCGLR 703 the Supreme Court held that *"even though the courts stipulate that the identity of a disputed land be clearly established or with certainty as a precondition for the grant of title, this does not mean mathematical certainty or exactness."*. The plaintiff successfully discharged his obligation to give the identity of the land in respect of which he seeks declaration of title.

The plaintiff as I have indicated above is also required to prove his root of title on the preponderance of probabilities. The root of title to land refers to the origin or source of the plaintiff's claim to the land. The plaintiff avers that the land in question is his share of the estate of his late father. The plaintiff is obliged to prove this averment by providing positive evidence. In **Majolagbe v Larbi and Others [1959] G.L.R 190 at page 192** per Ollennu J. (as he then was) stated as follows:

"Proof in law is the establishment of facts by proper legal means. Where a party makes an averment capable of proof in some positive way e.g. by producing documents, description of things, reference to other facts, instances, circumstances, and its averment is denied, he does not prove it by merely going into the witness box and repeating the averment on oath, or having it repeated on oath by its witness. He proves it by producing other evidence of facts and circumstances, from which the Court can be satisfied that what he avers is true." It is provided in the **Administration of Estates Act, 1961 (Act 63) sections (1), 2(1) 96(1) and 96(2)** respectively that:

1(1) "The movable and immovable property of a deceased person shall devolve on his personal representatives with effect from the date of death.

2(1) The personal representatives are the representatives of the deceased person with regard to the moveable and immovable property of the deceased person.

96(1) A personal representative may assent to the vesting, in the form set out in the Third Schedule, in a person who, whether by devise, bequest, devolution, appropriation, or otherwise, is entitled to the vesting beneficially or as a trustee or personal representative of any estate or interest in immoveable property,

a) to which the testator or intestate was entitled to, or

b) over which the testator exercised a general power of appointment by will, and which devolved on the personal representative.".

96(2) The assent shall operate to vest in that person the estate or interest to which the assent relates, and, unless a contrary intention appears, the assent shall relate back to the death of the deceased person.

Therefore, to prove that the plaintiff got the land in question from the estate of his late father, the plaintiff is required to provide a valid document in the form specified in the third schedule of Act 63 executed by a duly appointed administrator of his late father's estate vesting the land in dispute in him. In the case of **Lambert Sackey and Anor. v. George Chidiac and Anor. (2016) JELR 107811 (HC),** it was held that *"under the Administration of Estate Act therefore when a person dies testate or intestate, his moveable and immovable property devolves on his personal representatives who are the executors nominated by him in a Will or nominated by family and attached to a Will or in the case of death intestate applicants of an L/A. Until a vesting assent is executed by the said representatives, or those family members granted the letters of Administration, the beneficiaries or devisees have no capacity to deal with the property.".*

The plaintiff did not tender in evidence any document executed by a duly appointed administrator or executor of his late father's estate vesting the land in the plaintiff.

The plaintiff also avers that the land in question was allocated to him by Nayiri, and he tendered in evidence Exhibit A which is a document purporting to allot a piece of land to the plaintiff dated 30th March 2016. On the face of the document, it appears to emanate from the office of the Mamprusi Traditional Council. Exhibit A does not state the location of the land. It also does not describe the piece or parcel of land allotted to the plaintiff. Therefore, it cannot

be concluded that the land that is the subject matter of this suit is the same piece of land that Exhibit A purports to allocate to the plaintiff.

The plaintiff has woefully failed to prove on the balance of probabilities that he has title to all that piece of land located along the Nalerigu Nursing School Road sharing boundaries with Baba Nantomah and Oscar Liwal's houses.

Issue Two: Whether or not the defendant trespassed on the land the plaintiff is in possession of and sacked or drove Tani Nantomah (PW2) away from the portion of the land the plaintiff gave to her?

It is the case of the plaintiff that he gave a portion of the land described in the writ of summons to PW2 and the defendant came onto the land and sacked her from the land after she had placed a container on the land. It is therefore the case of the plaintiff that the defendant trespassed onto his land and carried out an act which is adverse to his interest in the land. The defendant denied going on to the land of the plaintiff to sack PW2 from the land. The burden of proof therefore lies on the plaintiff to establish this averment to the court on the balance of probabilities.

Although the plaintiff failed to prove his title to the land to convince the court to declare title to the land in his favour, he can still protect his possession of the land against any person who trespasses on the land provided he is able to prove that he is in possession of the land which is the subject matter of the suit. In the case of **Majolagbe v Larbi and Others [1959] G.L.R 190**, the court held that *"the law as to trespass is that if a person proves merely that he is in possession of land, that is sufficient to enable him to maintain trespass against anyone who cannot show a better title. Upon that principle, granting for the moment that the case is trespass and nothing more, the onus is upon the plaintiff to prove that he was in possession of the land at the date when he alleged the defendants entered thereon."*

The evidence on record clearly indicates that the plaintiff is in possession of the land which is the subject matter of the suit. This therefore entitles him to sue the defendant for trespass provided the defendant does not have a better title to the land and the plaintiff is able to prove that the defendant trespassed on the land on the balance of probabilities. The evidence on record indicates that the defendant is not laying claim to the land which the plaintiff is in possession of.

From the evidence-in-chief of the plaintiff, he did not witness the defendant coming onto the land to sack PW2. According to plaintiff, PW2 and her husband informed him of what transpired. From the testimony of PW2, the plaintiff gave her a piece of land to put her container on. Her husband arranged for the container to be put on the said piece of land. According to her, the defendant came there to ask him where he was from and subsequently took him to the house of one Wuni. After the defendant and the said Wuni realized that he was her husband, the defendant informed her husband that the land on which the container had been placed was a subject matter of dispute. PW2 when she was cross-examined by the defendant admitted that the defendant did not sack her from the land. PW2 also stated that PW1 after she had informed him of what transpired in respect of the land told her that that land is a subject matter of a case in court. This contradicts what PW1 said in his evidence-in-chief. According to PW1, PW2 came to tell him that the defendant came and held her and told her that he would not allow her to put the container where the plaintiff told her to put the container. Clearly, the testimony of PW1 cannot be relied on as it is not credible. PW1 also deliberately failed to tell the court that he also told PW2 that the land on which the container had been placed is a subject matter of litigation in court. The plaintiff and all his witnesses were not present when the defendant interacted with the husband of PW2. From the testimony of PW2, the defendant dealt with her husband and not her at the time the container was placed on the land. The husband of PW2 is therefore a material witness in this matter but the plaintiff did not deem it necessary to call him as a witness. I, therefore, conclude that the plaintiff failed to prove on the balance of probabilities that the defendant trespassed onto the land that he is in possession of and sacked PW2 from the land.

DISPOSITION:

After careful consideration of all the evidence on record, it is my judgment that the plaintiff's action fails, and I accordingly deny all the reliefs of the plaintiff.

A cost of GHS 1,000 is hereby awarded against the plaintiff in favour of the defendant.

SGD

H/W SIMON KOFI BEDIAKO ESQ

MAGISTRATE