CORAM: HER WORSHIP MRS ADWOA AKYAAMAA OFOSU, MAGISTRATE, DISTRICT COURT EJISU, ASHANTI REGION ON THE 25TH OF APRIL, 2023

SUIT NUMBER A1/85/2020

CHARLES KYEI POKU - PLAINTIFF

V

1.KWAKU NANTWI - DEFENDANTS

2.EMMANUEL ODURO KWARTENG

……

TIME: 10:01

PARTIES PRESENT

PARTIES SELF-REPRESENTED

JUDGMENT

By a writ of summons dated 23rd July, 2021 the plaintiff instituted the instant action against the defendants claiming the following reliefs:

A. ***A declaration that all that piece and parcel of land plot number 1 lying at Buoho Asotwe is the legitimate property of the plaintiff on which the defendants have cultivated plantain and other food stuffs without the consent of the plaintiff***
B. ***An order for the defendants to yield vacant possession of the disputed plot of land to the plaintiff for him to develop thereon since plaintiff was never informed before defendants planted such produce on the plot***

C. ***An order for perpetual injunction restraining the defendants, their respective assigns, workmen etc from entering onto or anyway interfering with the disputed plot***

In his statement of claim, the plaintiff says he is a retired civil servant while the defendants are biological brothers and reside at Buoho Asotwe near the disputed property. That the disputed property is a half plot of land and shares boundary with the plaintiff's family (Asona Abusua no. 3 of Asotwe) land, property numbered 18 and the land of Opanin Kwame Asare numbered plot number 2. The plaintiff further states that, his ancestral family acquired a vast farming land at Buoho Asotwe through early settlement. Sometime in 2013, the custodian chief of Asotwe, Nana Wereko Ade, demarcated all the land within his custodian jurisdiction into units/building plots after which he allotted one and half plots of land being plot number 18 and half of plot number 1 which shares boundary with one Maame Serwaa who owns the other half of plot number 1.

The plaintiff further says that he subsequently purchased Maame Ama Serwaa's plot in 2013 and she transferred absolute ownership to him. Since then, he has been in peaceful possession and he put sand and over 400 pieces of concrete blocks on the subject matter land.

The plaintiff in further averment says that sometime in 2016, he visited the disputed land and realised that the defendants have trespassed onto his land and unlawfully planted plantains thereon. He asked the defendants to give vacant possession but all efforts to get the defendants to yield vacant possession have failed.

The defendants deny the claim of the plaintiff and insist that plot number 1 is the property of the 2nd defendant which he purchased in 1993 from the then allocation committee in charge of the sale of lands at Asotwe. That the land in dispute is more than half plot which measures 71.0' x 73.3' as indicated on 2nd defendant's site plan.

The defendant also say that plot number 2 which shares boundary with plot number 1 is also the property of the 2nd defendant and not Opanin Kwame Asare as the plaintiff claims. That the 2nd defendant acquired plot number 1 together with plot number 2 in 1993 and he built a seven bedroom house on plot number 2 and allowed the 1st defendant to cultivate plantain and cassava on plot number 1 since the 2nd defendant does not permanently reside in Asotwe.

According to the defendants, Nana Wereko Ade never demarcated the land before he abdicated the stool. That it was the Krontihene and the sub-chiefs who demarcated the area in 2017 in order to obtain site plans for the land owners. He thus acquired his site plan in 2020. After the demarcation, plot number 1 now shares boundary with a road to the east where the 2nd defendant planted Alading trees on the boundary. The 2nd defendant says that he has been in possession of the land since 1993 and does not know anybody by name Maame Ama Serwaa or shares boundary with her.

The defendants conclude that they have been in peaceful possession of the disputed land since 1993 and cultivated on it since 1994 and so it is rather the plaintiff who has trespassed onto their land and should be restrained. The defendants therefore pray that the plaintiff is not entitled to his reliefs.

Both parties led evidence as per their witness statements which were filed pursuant to an order of the court. The plaintiff filed witness statements for three witnesses but only two of them appeared in court to testify. The defendants called only one witness. The plaintiff tendered four exhibits in evidence exhibits A to D and the defendants also tendered two exhibits in evidence, Exhibit 1 and 2 series.

From the pleadings of the parties the following issues were set down by the court for determination:

1. ***Whether or not the defendant acquired plot number 1, the disputed land in 1993***
2. ***Whether or not the plaintiff is the owner of the disputed land plot number 1***
3. ***Whether or not the plaintiff is entitled to his claim***

It is trite law that a person who asserts the affirmative of his case must prove. The standard of proof in all civil cases including land matters is proof by a preponderance of probabilities as was laid down by the Supreme Court in the case of **Adwubeng v Domfeh [1996-97] SCGLR 660** thus:

But section 11(2) of NRCD 323 imposed proof beyond reasonable doubt only on prosecutions in criminal actions and in proof of a commission of a crime in any civil or criminal action. While sections 11(4) and 12 of NRCD 323 clearly provide that the standard of proof in all civil actions is proof by a preponderance of probabilities, no exceptions are made. In the light of the NRCD 323 therefore the cases which hold that proof of title to land required proof beyond reasonable doubt no longer represents the state of the law

Thus the plaintiff in the instant case who seeks a declaration of title to the disputed land is required to prove his case by a preponderance of probabilities which is defined in section 12 of the Evidence Act 1975 (NRCD 323) as:

"…….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"

Issue 1

Whether or not the defendant acquired plot number 1, the disputed land in 1993

It is the case of the defendants that the 2nd defendant acquired two plots of land being plot number 1 and plot number 2 in 1993. According to the 2nd defendant, he built a seven bed room house on plot number 2 and also gave permission to the 1st defendant to cultivate plantain and cassava on plot number 1. He also testified that in developing plot number 2 which measured 100' x 80', he left 34' and added to plot number one which at the time was not even up to half plot. Thus, plot number 2 became 66' x70' which increased the size of plot number 1 to 71' x73.3' making it more than half plot.

The defendants did not tender any documents in evidence in support of his alleged purchase of plot number 1 and plot number 2 however he tendered exhibit 1 which is a site plan dated 9th June, 2020. The said site plan is materially the same as exhibit C tendered by the plaintiff with the exception of the name of the owner and date. The measurement of plot number 1 on exhibit 1 is 71'x90.1'x73'x90' just as exhibit C. Approximately therefore, plot number 1 measures 70 x 90' and not 71x73' as the defendants wanted the court to believe and this makes the assertion of the defendants doubtful.

Besides, per exhibit 1, the defendant's plot number 2 which he says shares boundary with the disputed plot number 1 and measured 100' x80' can not be true because the side of plot number 2 that shares boundary with plot number 1 measures 90.1'. In the absence of any site plan, indicating the actual size of plot number 2 to confirm the defendants' assertion of the plot size as 100'x80', I find on the evidence that, the defendants' assertion that he left 34' behind his building and added to plot number 1 cannot be true because if that were so, then his plot size should have reduced to 66'x80' and not 66x70' as he alleges. I also find that the defendants' claim was only deliberately calculated to get a measurement that will fit the present size of the land as per exhibit 1 and exhibit C. My finding is further buttressed by the following responses that the 2nd defendant gave during cross examination:

Q: You say you bought a piece of land in 1993. Which land is that?

A: A building plot

Q: What was the size of the land?

A: 100 X 80' for the first one and the second one was 36' x 35 '

Obviously, the above responses are contrary to the defendants' evidence per exhibit 1 which shows that plot number 1 measures 71'x90.1'x73'x90' and not 36'x35'.

Furthermore, DW1 who said that the defendants are her brothers said in her evidence in chief that sometime ago the 2nd defendant bought two plots of land at Asotwe. That one of the lands was a full plot and the other being plot number 1 did not measure up to a half plot. During cross examination however, she could not confirm that the 2nd defendant bought two plots of land in 1993. Below are the relevant portions of cross examination of DW1:

Q: You sad your brother bought a piece of land. How many did he buy?

A: I don't know how many he bought

Q: When did he buy it?

A: 1993

Xxxxxxxxxxxxxxxxxx

Q: You said when he bought it he left 34'. On which side was it? Is it plot 2 or plot 1?

A: At the back

Q: So that 34' does it enter my land?

A: I can't tell

Q: You said you and your mother were farming on the land were you farming on the land like the olden days where you farm for domestic purposes?

A: It was on the same land that we built on and we were farming on the other part

The above responses of DW1 also show that the farming activities of the defendants were done on the same plot that the 2nd defendant built the seven bedroom house and not on any other plot.

On the evidence therefore, I find that even if the 2nd defendant bought any land at all in 1993, then it is only plot number 2 on which he has put up his building and not plot number one as he wanted the court to believe. I therefore hold that the 2nd defendant did not acquire plot number 1 in 1993 and indeed has never acquired same.

Issue 2

Whether or not the plaintiff is the owner of the disputed plot number one

It is the case of the plaintiff that half of plot number one belonged to his family on which his mother farmed and the other half belonged to one Maame Serwaa (PW2). His family gifted the half portion of plot number 1 to him and he also bought the other half of plot number 1 from Maame Serwaa.

In **Mary Larley Nunoo vs Manase Ataglo [2020] DLSC 9331** the Supreme Court observed that:

"This action being an action in which the plaintiff is asserting title to the disputed land, the law requires that he produces persuasive evidence establishing his root of title, his mode of acquisition and overt acts of possession".

(See also the case of **Mondial Veneer (GH) Ltd. V Amuah Gyebu XV [2011] SCGLR 466)**

The plaintiff supported his purchase of half plot from Maame Serwaa with exhibit A, a deed of transfer dated 19th July, 2013. During cross examination of Maame Serwaa, it became obvious that her witness statement was not read to her because in paragraph 5 of her witness statement, she stated that *"the afore said mentioned plot of land belonged to my mother, Maame Ama Serwaa who absolutely sold same to the plaintiff herein after same had been allotted to her by the custodian chief of Asotwe Nana Wereko II"*. She however confirmed during cross examination that the said property was hers. The following ensued:

Q: Why did you sell the land in dispute which I acquired in 1993 and even built on it to the plaintiff?

A: It was my own land that I sold to the plaintiff

Again, PW2 is quite advanced in age and therefore the court observed that he could not appreciate so many things and therefore there appeared to be some inconsistencies in her responses. In one breath she says it was full plot that she sold to the plaintiff. In another breath she said it was half plot. Here is what transpired during cross examination:

Q: The land in dispute, was it half plot or full plot?

A: It was full plot

Q: You said you sold full plot to the plaintiff what was the size of the land you sold to the plaintiff?

A: I am not literate so I can't tell

Q: The plaintiff has testified that it was a half plot not full plot. What do you say to that?

A: It was a full plot that I sold to him

Q: The plaintiff says that you belong to the same family so your land shared boundary with his family land true or false?

A: His mother's plot was half and mine too was half

Q: I am putting it to you that you are not being truthful. You just told the court that you sold full plot of land to the plaintiff. How come you are now saying yours is half and his is half

A: Yes when mine is added to his then it becomes one

Subsequently upon examination by the court, PW2 revealed that it was her son who sold the land to the plaintiff and that she was not the one who signed exhibit A. This was confirmed by PW2 who testified as follows during cross examination:

Q: When the plaintiff bought the land where did you meet to sign the document?

A: We signed at Kwame Boadu's house

Q: I put it to you that Maame Serwaa was in court court and said she has not signed any document

A: When they brought the document, it had already been thumb printed but I did not see Maame Serwaa herself thumbprint.

Admittedly, PW2 as I have already stated is quite advanced in age and so it is not surprising that she gave conflicting responses during cross examination. One thing is however clear from the evidence that, regardless of the inconsistencies in PW2's testimony and her later confession that she did not thumbprint Exhibit A, PW2 gave her full consent for the land to be sold to the plaintiff otherwise she would not have come to testify in support of the plaintiff's case. Indeed she would have challenged exhibit A but no such challenge has been mounted by PW2 to dispute the validity of Exhibit A. Exhibit A will thus be taken for what it is to support the plaintiff's assertion that he bought half plot of land from PW2.

The plaintiff further state that sometime in 2016, a new chief, Nana Sarfo Kantaka II was installed as the chief of Asotwe and he announced that all those who have purchased land should come to the palace and pay for k)k))k) (knocking fee). He thus went and paid the said k)K)K) fees. He supported this with exhibit B, a receipt of payment from the Asotwe Stool Land dated 14th February, 2017. The plaintiff

again testified that in 2020, he was invited to the Asotwe chief's palace to procure his documents in respect of the disputed land. He used his son's name (Michael Kyei Poku) for the documents. The plaintiff buttressed this with the allocation note exhibit D and a site plan for plot number 1, exhibit C dated 22nd May, 2020.

On acts of possession, the plaintiff says that he deposited a trip of sand on the land and also placed about 400 cement blocks on it. The plaintiff also testified that sometime in 2016, he visited the land and saw that the 1st defendant had trespassed onto the subject land and had unlawfully planted plantains thereon. He asked him to give vacant possession but the 1st defendant pleaded with him to give him a period of time to plant and will yield vacant possession when the plaintiff is ready to develop the land. The plaintiff's evidence was corroborated by PW1 who said he was the one who assisted the plaintiff to deposit the trip of sand and molded over 400 cement blocks and placed same on the land. PW1 also testified that he was the one who first saw that someone had planted maize on the land and he informed the plaintiff about it and investigation revealed that it was the 1st defendant who was cultivating the land. These assertions by the plaintiff and his witness PW1 were never challenged by the defendants.

As a general rule, a defendant in a civil matter is not required to prove anything however if he desires a ruling in his favour then he has a duty to help his case. Thus in the case of **In RE: Ashalley Botwe Land v Kotey and others [2003-2004] SCGLR 420** the Supreme Court held that:

"a litigant who is a defendant in a civil case does not need to prove anything , the plaintiff who took the defendant to court has to prove what he claims he is entitled to from the defendant. At the same time, if the court has to make a determination of a fact or of an issue and the determination depends on evaluation of facts and evidence, the defendant must realise that the determination cannot be made on nothing. If the defendant desires the determination to be made in his favour, then he has the duty to help his own cause or case by adducing before the court such facts or evidence that will induce the determination to be made in his favour".

Indeed as has been established by the evidence, the 2nd defendant did not acquire the disputed land in 1993 and indeed has never acquired same. It is therefore not surprising that he could not lead any credible evidence to upset the evidence led by the plaintiff to establish his ownership of the disputed property. As noted above, exhibit 1 which was procured by the defendant is of no consequence as it is trite that a site plan does not convey an interest in land. The site plan was also not supported by any grant of the said plot number 1 to the 2nd defendant by way of an allocation note or an indenture.

In **Takoradi Flour Mills v. Samir Faris [2005-2006] SC GLR 882,** the Supreme Court held that:

It is sufficient to state that this being a civil suit the rules of evidence require that the plaintiff produces sufficient evidence to make out his claim on the preponderance of probabilities as defined in section 12(2) of the Evidence Decree 1975 NRCD 323. In assessing the balance of probabilities all the evidence be it that of the plaintiff or defendant must be considered and the party in whose favour the balance tilts is the person whose case is the more probable of the rival versions and is deserving of a favourable verdict

Having considered the evidence of the plaintiff and the defendants on this issue, it is my view that the balance tilts in favour of the plaintiff who has been able to discharge his burden of producing sufficient evidence in proof of his claim.

On the preponderance of probabilities therefore, I hold that the plaintiff is the owner of the disputed property, plot number one.

Issue 3

Whether or not the plaintiff is entitled to his claim

The plaintiff seeks a declaration of title to plot number 1 as described on the writ of summons, an order for the defendants to yield vacant possession and also an

order for perpetual injunction restraining the defendants their respective assigns, workmen, etc from entering onto or interfering with the disputed land in anyway.

Having successfully established that he is the owner of the disputed plot, it is my view that the plaintiff is entitled to all the reliefs indorsed on the writ of summons.

CONCLUSION

Consequently, I enter judgment in favour of the plaintiff and declare that the disputed land plot number 1 at Buoho Asotwe is the property of the plaintiff. The defendants are hereby ordered to yield immediate vacant possession to the plaintiff. It is further ordered the defendants, their agents, assigns workmen, privies and any persons claiming through them are perpetually injuncted from entering the disputed land or interfering with it in any manner whatsoever. Costs of GH₵2,000.00 is awarded against the defendants.

ADWOA AKYAAMAA OFOSU (MRS)

DISTRICT MAGISTRATE