

IN THE DISTRICT COURT HELD AT OSINO ON FRIDAY THE 12TH JANUARY
2024 BEFORE HIS WORSHIP AYAGIBA SALIFU BUGRI, DISTRICT
MAGISTRATE

SUIT NO. A2/24/23

SUIT NO. A2/25/23

1. WILLIAM AKPABLI PLAINTIFFS
2. AKPABLI AKANPAJAAB
OF OSINO

VS

1. AIKINS OFORI
2. FELICIA ANIMWAA DEFENDANTS
3. ABENA DIANA
OF ALL OF OSINO

JUDGEMENT

Reliefs sought

1. Declaration of title, recovery of possession and ownership to all that piece of land sharing boundary with the property of Louis Out Boateng
2. An order for perpetual injunction against the defendants, their agents, assigns, workmen etc from having anything to do on the disputed land
3. Costs

Or

1. Recovery of cash the sum of GHC15000 being the cost of building plot the plaintiff bought from D1 but D2 and D3 have claimed ownership
2. Interest on the said GHC15000 from 2nd September, 2022 till date of final payment
3. Costs

Brief Facts

The instant suit is a consolidated one to wit A2/24/23 and A2/25/23. In this suit the respective plaintiffs are father and son respectively. The two acquired a parcel of land from D1 for residential buildings. D2 and D3 claimed ownership of the parcel of land, and the plaintiffs decided to take separate actions against D1, D2 and D3 for the aforementioned reliefs.

In the opinion of the court, since the separate suits are against the same defendants, and the subject matter is same, it was imperative to consolidate the separate suits since plaintiffs acquired the parcel of land together and seeking same reliefs from the defendants.

Plaintiff is an auto mechanic residing in Suhum and his father Akpabil Akanpajaab a farmer. The case of plaintiff is that early in 2023 D1 sold land to him and his father at the cost of GHC15,000 and GHC14,500 respectively. Whilst working on the land, D2 and D3 came unto the land and claimed ownership. Plaintiff says he was at the foundation level of the building project and had molded blocks on the land at the time. Plaintiff says his father intervened and asked D1 to resolve the misunderstanding as D1 insisted he is the owner of the land in dispute. After waiting in vain for the resolution, plaintiff decided to take the instant action.

On the other hand, plaintiff's father who is a witness in the case, upon acquiring the adjoining land traveled to the north. Plaintiff informed him that their boundary pillars had been tampered with and removed in some instances. Upon his return and a complaint lodged to D1, D1 re-demarcated another parcel of land for him. After buying stones and sand unto the land, a road construction affected the land. After an announcement by the contractor for those whose land had been affected to meet up with him, his adjoining land owners informed him that two women have laid claim to

his land and asked him to contact them. Efforts to get D1 to resolve the impasse proved futile

A witness in this case to wit PW1 says he is the one who introduced plaintiff to D1 to purchase the land. The witness added that plaintiff is his nephew whilst D1 is his friend, and he knows D2 and D3 as residents of Osino.

According to the witness, D1 is an agent who deals in land. D1 had told him that he was putting up his self-acquired land for sale; hence, he directed plaintiff and his father to D1. Upon inspecting the land in question, to wit D1 and D1's in-law, plaintiff and plaintiff's father and the witness, payment of GHC15, 000 was made after negotiations. Plaintiff further expressed interest in an adjoining land, that was also negotiated, and GHC14000 paid in that respect. All payments were made to D1. Later, part of the acquired land was affected by road construction and D1 was informed about the development. Subsequently D2 and D3 claimed ownership of the land, and D1 was notified to resolve the misunderstanding. However, D1 asked the plaintiff and his father to resolve the issues pertaining to the land by themselves since they are the new owners and in possession. D1 later requested GHC3000 to document the sale, but plaintiff did not pay up. Several efforts to reach D1 to resolve the dispute proved futile.

Opening his defense, D1 admitted that he sold land to plaintiff and his father at GHC15000. According to D1, he acquired the land from D2 and D3's mother as a farmland and paid GHC6000 for it. D1 says the transaction took place in 2021 in the presence of one Kofi Ampoma who issued a receipt on behalf of D2 and D3's mother to that effect. For three years that he has been in possession of the land in question, nobody has disturbed him. After he sold the land to plaintiff, a road construction affected a portion of the sold land. D2 and D3 had also laid claim to the same land. Even

though D1 attempted to resolve the matter by reporting D2 and D3 to their uncle, and the chiefs Palace, they declined both invitations.

According to D3, D2 is her biological sister. She does not know D1 and plaintiff. D3 says the land under dispute belongs to her biological mother to wit Esther Ampoma. One day they were informed that one Kofi Ampoma, a brother was in the process of selling land to a third party. D2 caused an announcement to be made warning anybody from buying land from him. Sometime last year her mother, who is now deceased, informed her that someone had come to her that Kofi Ampoma had sold land to him and she asked that person to recover his money from her brother. Until the road construction affected a portion of the land, they had no idea that D1 was still in possession of the said land and had entered his name with the contractor to be paid compensation for encroachment.

According to D3, D1 met her mother at the time she had been blind for 7yrs. D3 says she has been responsible for all lands belonging to her mother, witnessed sale of portions of the land, and issued receipts on behalf of her late mother. D1 is not one of the purchasers as far as she is concerned.

Issues for determination

Whether or not D1's acquisition is valid

Whether or not Kofi Ampoma had capacity to sell the land in question

Whether or not Madam Esther Ampoma ratified Kofi Ampoma's sale by her conduct

In the instant case, it is evident that Esther Ampoma is the owner of the land under dispute.

According to D1 Esther Ampoma granted, him the said land as a farmland and he paid GHC6000 for it. Even though D3 says, she is responsible for all land sales made by Esther Ampoma she has no knowledge of the transaction between D1 and her mother.

According to D1 Esther Ampoma sold the land to cater for her health and payment made through Kofi Ampoma. This statement has been corroborated by D3 by acknowledging at paragraph 5 of her statement of defence that Esther Ampoma was seriously sick to a point that she became blind. It is further stated at that same paragraph that, plaintiff had approached Esther Ampoma to release the said land to him, but she declined to do so and told plaintiff that the land belongs to somebody. The court makes an inference from the evidence that the land was in possession of a third party, hence her inability to release it to plaintiff when he approached her in that respect. Whether or not it was a sale to that third party, and whether or not it was D1 is not in evidence. The one thing that is clear to this court is that D1 had ever approached Esther Ampoma for the land, and even though D3 says his offer was rejected, evidence shows that D1 was indeed in possession of the land and purportedly sold same to plaintiff and his father.

Per DW1's testimony, his uncle sold land to D1 a few years ago. DW1 witnessed the sale upon the invitation of his said uncle. According to DW1 upon reading the contents of the document handed to him his uncle was selling a plot of land to D1 at GHC6000 of which GHC4500 had been paid in advance awaiting documentation for the outstanding GHC1500 to be paid, hence DW was invited for the sale to be concluded. The amount mentioned by DW1 as the sale price of the land is same as D1 says he purchased the land from Esther Ampoma. However, DW1's evidence does not corroborate D1's testimony that he purchased the land directly from Esther Ampoma. Additionally, even though DW1 is a member of the family, he is not one of the principal members of the family to witness a sale of land under the circumstances to make the sale authentic. DW1 is a nephew to the seller and a son of D2. From the evidences, adduced D2 and D3 are the principal members of the family whose concurrence is necessary for a valid sale

of land as in the instant case in the absence of any family members that have not been mentioned.

On the other hand, DW2 admits in his testimony that D1 confided in him that he bought land from a vendor. When he later inspected the land document in the presence of D1 and the vendor, he observed that it was a plot of land and not an acre as D1 had earlier told him. DW2 said he signed the document as a witness on behalf of D1 and advised D1 to limit himself to a plot, which the vendor's family had agreed to relinquish to him. From the witnesses testimony, one can infer from the latter part that there were issues with the sale hence, DW2 said "I advised D1 that the family of the vendor has agreed to leave the land for him but not an acre.....".

DW3 (Kofi Ampoma) admits that he sold land to D1. He further acknowledges D2 and D3 as his sisters, D3 being the eldest. The witness says he was in financial distress hence when he was informed that somebody needed land to buy, he decided to sell his share of land from his mother Esther Ampoma. DW3 says he sold the land to D1 at GHC4000 and documents prepared and signed by their respective witnesses to that effect for one plot only to wit, 80*100 by size.

Indeed, DW3 has corroborated the testimony of DW1 and DW2 as those who witnessed the transaction between him and D1. Additionally, DW3 who is also the vendor or seller in this case has admitted and corroborated the testimonies of DW1 and DW2 that it was only one plot of land that was sold to D1 and not an acre and further stated the size of the plot that was sold to D1.

DW4 is D1's wife and she testified to the effect that, due diligence was done by D1 upon her advice before payment was made for the land in dispute. D1 had told her that he met the vendor's i.e. DW3's mother who confirmed that D1 was selling his share of land that she had bequeathed to him. According to the witness even though the land was

sold to them as a farmland, which they intended to cultivate on it, they later decided to sell it, hence it was sold to plaintiff and his father when they expressed interest.

The issues about the land begun when a road construction affected a portion of the land and, Plaintiffs enjoyment of the land for that matter. D2 and D3 attempted to enter their names as owners of the affected land but D1 had done so already for that compensation. It is apparent that even though plaintiffs had already acquired the land D1 entered his name with the contractors on the blind side of plaintiffs who had become owners of the land notwithstanding the legitimacy of the sale and size of land purported to have been sold.

It is apparent on the face of the evidences adduced that D1 avoided the plaintiffs for obvious reasons which I can infer is to benefit the compensation and also avoid the misunderstanding concerning ownership of the land in dispute.

DW5 corroborated D1's testimony that the land purchased by D1 was a farmland and even though D1intended to cultivate same, he did not due to health reasons. The witness added that D1 actually received compensation of GHC200 from the contractor for the portion of plaintiff's land that had been affected by the road construction. The statement confirms the courts inference of D1's avoidance of the plaintiffs. It is evident that D1 obtained the compensation from the contractor after he had sold the land to plaintiff and his father.

One of the factors, which must be present to constitute a valid ratification, is the Status of the principal. In the law of agency, the person who can ratify the agents in whose name or on whose behalf the agent purported to act. The principle is that an undisclosed principal cannot ratify. It means that the agent should have indicated to the third party that he was acting on behalf of another. The third party should know that there is a principal involved and that he is not dealing with the agent on his own behalf.

It follows that if the agent purported to act on his own behalf or on behalf of someone entirely different, then the principal cannot ratify.

Others are the principal must be in existence at the time the transaction is entered into, there must be full disclosure of all material facts, the principal must be competent and have the contractual capacity at the time of the act, and the principal must ratify in time, acts that are void, forgeries cannot be ratified.

In the instant case, granted Esther Ampoma granted the land or did not grant the land in dispute to her son, it is evident that D1 interacted with Esther Ampoma when the issue about the sale of the land by her son came up.

What I infer from the evidences adduced is that there was a seeming ratification of DW3's sale by Esther Ampoma by granting the land to D1 as a farmland. Indeed D1 has testified to the fact that it was a farmland initially. DW4 also corroborated that it was a farmland initially, but they decided to sell it to plaintiffs as residential plots.

Under the circumstances, D1 had no right and authority to sell the same land to plaintiffs without the express authority of Esther Ampoma. At best, D1 could have only leased the land to plaintiffs for his lifetime granted he has only a life interest in the land. Especially so when it is not expressly stated in the evidence the timelines that D1 had been granted to use the land in question as a farmland.

Additionally, granted Esther Ampoma bequeathed the land to her son DW3, the dimensions of the said land are not stated per that grant. Thus, it is not surprising that there are differences in the size of the land that D1 sold to plaintiffs and what was actually granted him. Farmlands are usually granted in acreage or acres whereas building lands are in plots. Under most customary land disposition or conveyance however, such grants are made by demarcating boundary lines and where there are

adjoining land owners they are invited as witnesses. In the instant case due to the controversy surrounding the acquisition of the land, it is not in evidence if the necessary publicity and guaha was done, hence the boundary lines are not in evidence and as a matter of fact, except what D1 has testified.

The receipt of sale tended by the plaintiffs is remarkably different from the sample tended by D3 as the form any receipt of sale of land by Esther Ampoma was issued. The absence of this form of receipt to wit, EXHIBIT 1, which has not been rebutted by D1, or plaintiff's buttresses evidence that the land under litigation was granted to D1 as farmland and not a sale.

On the other hand, in the opinion of this court, admitted in her evidence that D1 met her mother Esther Ampoma at the time she was blind. She further admitted that her mother had told her that someone, presumably D1 had come to talk to her about land sold by to him by DW3 i.e. Kofi Ampoma. It is trite that disability is not inability.

As long as Esther Ampoma, the owner of the land under litigation was competent and had capacity to contract with a third party, her dealing with D1 was valid.

This court is convinced that, it was in that meeting that Esther Ampoma converted the sale into a farmland.

As far as D3 is concerned, her mother was illiterate and thus she was responsible for keeping her documents and anything that has to do with formal transactions where writing is concerned. In the instant case however, the transaction was a customary grant where writing was not necessary. Indeed, DW3 had already sold land and received payment from D1 without the consent of his mother. However, that does not nullify any act taken by Esther Ampoma without D3's knowledge. DW3's transaction with D1 only needed to be ratified by Esther Ampoma to make it valid, which the evidence suggests

took place between D1 and Esther Ampoma. This is why I refer to the transaction as a seeming ratification because Esther Ampoma did not ratify the sale by DW3 but converted the sale into a grant of a farmland. Consequently, D1 had the right to eat from the land but not to sell it as he did to plaintiffs. D1 needed the authority of D2 and D3, in the absence of Esther Ampoma to sell the land or alter its incidence by any form.

It is the opinion of this court that had Esther Ampoma actually bequeathed the said land to DW3 her son; she would have done so in the presence of witnesses. Thus, the sale by DW3 to D1 would have been a valid one without any encumbrance.

To the extent that an announcement was made through the local town address system for all to be wary of any land sale by DW3, meant that DW3 had no authority and capacity to sell the land under litigation at the time he did so.

The inference I make out of DW3's evidence that the land under litigation was bequeathed to him by his mother is not credible. To the mind of this court, Esther Ampoma allotted portions of her land to her children including DW3 to farm or cultivate on. By that, she had not relinquished her rights or ownership of the land. The land still had the identity of family property or self-acquired property of Esther Ampoma in the absence of evidence to make a categorical determination of that since it is not in evidence how Esther Ampoma acquired the land.

After evaluating and analyzing the evidences adduced before this court, I have made the following findings of fact:

The land under litigation is the property of Esther Ampoma

That the land under litigation is the farmland of DW3 Kofi Ampoma

That D1 acquired the land from DW3

That D1 resold the land to plaintiffs

That a road construction affected the land under litigation

That D1 received compensation from the road contractor even though he had sold the land to plaintiffs.

To conclude, to the extent that the land under litigation is an allotment of his family land, DW3 could not dispose of it without the consent of his mother who is the landowner or head of family as far as the instant case is concerned. Especially so when it is in evidence that she allotted the land to her children and sells some when the need arises.

To the best of this case as the evidence suggests, DW3's mother seemingly and partially ratified DW3's sale to D1 by granting same land to D1 as farmland, which D1 has admitted same and corroborated by DW4. It is apparent that the move was to prevent D1 from recovering money he paid to DW3 for the unlawful sale. After all, DW3's indebtedness to D1 would have been family, debt and his mother will not sit by unconcerned for the unlawful deeds of his son. As long as D1 accepted the grant as farmland, he only had a life interest and had no authority or capacity to sell same to a third party, and in this case plaintiffs.

One of the unlawful customary dispositions of family land is:

Unlawful Disposition by a Member of his Allotment

Per university of Ghana Law Journal, 1967:

Unlawful Disposition of Family Land VOID or VOIDABLE [1967] VOL. IV NO. 2UGLJ 111-121. Kom Enoch D. writes:

(a) The basic idea behind family land holding is that it should be enjoyed by members of the family in succession, a "settlement" if you so choose to call it.

Hence, Sarbah wrote:

"The Customary Law says they who are born or they who are still in the womb required means of support, wherefore the family land and possessions must not be wasted or squandered".

A Chief of Ijebu-Ode was reported in West African Lands Committee's Report as saying:

"I conceive that land belongs to a vast family of which many are dead, few are living, and countless members are yet unborn."

*The title of family land is vested, not in the family head, but in the family as a corporation aggregate and a member's right of occupation, user and enjoyment is only that of a possessory licensee. The courts have, therefore, held that a family member has no transmissible, alienable and attachable interest in family land allocated to him. If therefore, a member, be he a family head or not, purports to dispose of his allotment without the knowledge and consent of the family qua a beneficial owner, the principle of *nemo dat quod non habet* should apply and such a disposition is void, not voidable. Moreover, a member being possessory licensee cannot dispose of a greater interest than he himself had in family land.*

*(b) In Taylor v. Williams (supra) it was held that a devise by a member of his allotment without knowledge and consent of the family was null and void. It is, therefore, illogical to say that if a member disposes of his allotment by will it is void, and if by an inter vivos conveyance, it is voidable. One cannot see the reason for the distinction. If the principle of *nemo dat quod non habet* applies to a disposition by will it should equally apply to an inter vivos disposition.*

(c) Lastly, on principle such sales or dispositions are null and void. There is the presumption in West Africa that land belongs to a stool, family or the village community and scarcely to the individual. Hence, where a person sells as a beneficial owner and not in a representative capacity, his title must be thoroughly investigated.

If a purchaser finds that, his vendor is a member selling family property in his possession, it is the duty of the purchaser to consult with and obtain the consent thereto of the principal members of the family. If he fails to do this the disposition in the eyes of customary law is unlawful.

Sir Donald Kingdon C.J., speaking of unlawful disposition of family land by a member, said:

"Under native customary tenure an individual cannot alienate the land he occupies, consequently the rights of his descendants are safeguarded and cannot be realised by him. However, once the tenure becomes fee simple, the rights of generations yet unborn can be sold and the proceeds squandered by the present generation. This alone should, in my opinion, make the court slow to implement, in the exercise of its equitable jurisdiction, the actions of persons who have selfishly sold or purported to sell the fee simple of land previously held under native customary tenure. The equities are not all on one side."

As Ollennu J. pointed out in Ohimen v. Adjei

"It would be chaotic if any member could compromise the portion of the family by an act which, while benefiting him personally, was detrimental to the interest of the family as a whole."

It is an essential characteristic of a family property that it should exist for the benefit not of any individual or member, but of the family as a whole."

To the extent that the land under litigation is not D1's self-acquired property but a land granted to D1 to eat from, the sale of the land made to plaintiffs is null and void. At

best, D1 only has a life interest in the land and cannot grant same to a third party by sale or beyond his life interest.

D1 is accordingly liable to refund GHC15000 and GHC14000 payment by plaintiffs William Akpabil and Akanpajaab Akpabil respectively.

Costs of GHC2000 awarded against D1

**HIS WORSHIP
AYAGIBA SALIFU BUGRI,
MAGISTRATE**