IN THE DISTRICT COURT HELD AT AGONA AHANTA ON MONDAY THE 15TH DAY OF JANUARY, 2024. BEFORE HER WORSHIP AWURAMA DAMOAH DARKWAH – MAGISTRATE.

SUIT NO: A11/10/23

KOJO MAWENIBRE PLAINTIFF
OF ADIEWOSO

VRS

HELENA BLAY, aka NSOWAH DEFENDANT
OF ADJUMAKO

JUDGMENT

By a writ of summons sealed in this Registry on the 17th day of February 2023, the Plaintiff claims against the Defendant:

(1) An order directed at Defendant to stop harassing and threatening Plaintiff and his grandson Thomas Kwaw on a seven (7) acre cocoa farm cultivated by Plaintiff about eight years ago on Plaintiff's late father's land at Adiewoso, which Defendant is bent to take from Plaintiff

(2) A further order directed at Defendant to give Plaintiff a share of rubber Defendant cultivated on Plaintiff's land, but Defendant has refused to provide Plaintiff with his share despite repeated demands

(3) Perpetual injunction restraining Defendant, his agents, privies, workmen, and assigns who claim to have anything to do with Plaintiff 7 acres of cocoa farm.

The brief facts of the case are simply these: The Plaintiff is the child, while the Defendant is the granddaughter of Kojo Agyarko (deceased). Kojo Agyarko broke the virgin forest and reduced some portions into Adiewoso's farmlands in the Western Region. These farmlands include the disputed farmland before this court. The plaintiff asserts that his father gifted the disputed farmlands to him. Thus, he cultivated seven (7) acres of cocoa and subsequently gifted the cocoa farm to his grandson Thomas Kwaw to tend and maintain. Unfortunately, Defendant has threatened and restrained the grandson from harvesting the cocoa beans. Furthermore, Defendant has refused to share proceeds of rubber cap lumps she harvested from farmlands he gave her to cultivate rubber on, hence the instant action.

According to Defendant, the disputed farmland is family property and not Plaintiff's personal property. Thus, he cannot unilaterally alienate portions to his grandson. It is rather Plaintiff who has refused to take receipt of his share of the proceeds from the sale of the rubber cap lumps because the matter is in court.

It must be emphasized that in civil matters, the party with an issue to present to the court has the burden of persuasion to convince the court that his story is more probable and likely to be accurate than his adversary's. And unless he can persuade the tribunal of fact, he may get no remedy because he who asserts must prove the assertion. See **BANK OF WEST AFRICA LTD v ACKUN (1961) JELR 67606 (SC).**

The plaintiff testified on oath that about thirty (30) years ago, his father, Kojo Agyarko, gave him land at Adiewoso, commonly called Nyaasemhwe, to farm on. He cultivated cocoa and rubber on the land; however, he retired from farming and gave the farms to his daughter Juliana Mawenibre to tend the farm due to old age. His daughter stopped farming

because Defendant's brother, Amos Atta Kakra, threatened her not to step on the farm or else she would be slaughtered into pieces. Thus, he reported the threat to Abura Police Station, who arrested Amos Atta Kakra. The plaintiff further testified that the defendant has refused to share the proceeds of his rubber farm with him despite repeated demands. So he reported the matter to the Chief of Adjumako and his elders, and it was settled that the parties would divide the rubber into three equal halves and one-third would be given to him. He unilaterally divided the rubber farm and took one-third when Defendant failed to participate in the division exercise as agreed on. Although he shared the rubber farm amongst themselves, Defendant has denied him access to his portion of the rubber farm.

It was the evidence of Defendant on oath that she is a farmer and Plaintiff is her uncle. In 2012, Plaintiff alienated five (5) poles of family land for her to cultivate rubber on. She started tapping the rubber sometime in 2020 and has since shared the proceeds with Plaintiff after paying her cost, including tappers, carriers and transport wages. Plaintiff had wanted to give the farm to his daughter, but the family opposed his decision. The plaintiff, dissatisfied with the family's decision, reported to the Police at Gyabenkrom and further stated that her brother, Atta Amos, destroyed his rubber stumps, which statement was not accurate. The Police invited her brother to the station and advised that the issue borders on family land; hence, it should be settled amicably. The Chief of Adjumako, Nana Kesse, withdrew the dispute from the police station to settle the matter after his brother paid an amount of GH¢3,000.00 to Plaintiff as the cost of the damaged rubber stumps.

During the customary settlement, it was settled that Plaintiff could not alienate family land to his children. Aggrieved by the decision, Plaintiff demanded that she give back the land on which she had cultivated her rubber farm. Thus, they agreed to visit the farm with the chief and his elders. While

waiting for the day to visit the farm, Plaintiff unilaterally went to the farm, demarcated it and took half of it. But she resisted Plaintiff from going to her farm.

In support of her case, the Defendant called two (2) witnesses, Atta Kakra (DW1) and Amos Eshun (DW2). DW1 corroborated Defendant's testimony and added that Plaintiff is her elder brother while Defendant is her daughter. Their deceased father gifted his lands to all his children. However, all her siblings are deceased, safe for Plaintiff and herself. Currently, Plaintiff controls all their family lands at Adiewoso. Plaintiff demarcated a portion of the family land for Defendant to cultivate rubber on. Thus, the defendant cultivated the rubber in 2012 and started tapping it in 2019. At all times, Defendant shared proceeds of her yields with Plaintiff until Plaintiff sought to take over the farm from Defendant.

According to DW1, while one of their brothers, Awumi, was alive, he bequeathed portions of the family lands to his children to farm. However, before the demise of Awumi, Plaintiff, with the assistance of the chief of Mpatase, recovered possession of the land from Awumi's children since the lands are family property and not Awumi's personal property. Ironically, Plaintiff had wanted to give the farm to his daughter; however, his nephews and nieces resisted his decision and reminded him that he recovered possession of family land, which his brother Awumi sought to bequeath to his children; hence, he could not do the same. The land in dispute is the property of the Asamanga family of Adjumako, and the Plaintiff cannot bequeath it to his children without the consent of his extended family members.

DW2 corroborated the evidence on record and added that Plaintiff is his uncle while Defendant is her sister. His grandparents, Opanyin Agyako and Maame Ayisah, broke the virgin forest at Adiewoso and settled thereon. They gave birth to seven children: Nketsiaku, Awume, Gyansah, Kojo

Mawenibre, Atta Panyin, Atta Kakra and Tawia. Five of the children are deceased, safe for Plaintiff and Atta Kakra. His grandparents divorced, and his grandmother left the marital home with Atta Kakra, the only female child to settle at Adjumako. His grandfather farmed on the disputed land with his children and bequeathed the lands to his children before his demise in 1990. Subsequently, Plaintiff became custodian of the farmlands since he has lived at Adiewoso all his life. The plaintiff alienated the disputed farmland for him to farm on. However, he informed Plaintiff that he has other farms he is working on; hence, with Plaintiff's consent, he passed the farmland to Defendant to farm.

Before determining the issues before the court, it is pertinent to reiterate that Defendant admitted in her pleadings that since 2020, she has been sharing the proceeds from the sale of the rubber cup lumps with Plaintiff. However, the plaintiff refused to take receipts of his share because the matter was in court. Judgement on admission is entered in Plaintiff's favour regarding this relief. At this moment, the defendant is ordered to give Plaintiff his just share of the proceeds from the rubber farm.

The court will consider the parties' evidence to determine the first and third reliefs, which the defendant denied. The issues that emerged from the evidence led at the trial could be summarized as follows:

1) Whether or not Plaintiff was able to demonstrate positively that Defendant harassed and threatened him and his grandson.
2) Whether or not Plaintiff is the owner of the land on which Defendant cultivated the rubber plants
3) Whether or not Defendant be injuncted from Plaintiff's seven-acre cocoa farm.

For a Plaintiff to succeed in his action against a Defendant, he has a burden to persuade the court to believe his story as against that of the Defendant. And unless he can persuade the tribunal of fact, he may get no remedy because he who asserts must prove the assertion. See **BANK OF WEST AFRICA LTD v ACKUN (supra).** In this case, where the defendant is on the farmland in dispute and the plaintiff, amongst other reliefs, seeks to injunct the defendant and her assigns, he must prove a better title. See **MENSAH V AHODJO (1961) GLR 296.**

Section 10(1) of the Evidence Act 1975 (NRCD 323) defines the burden of persuasion as the "***obligation to establish a requisite degree of belief concerning a fact in the mind of the tribunal of fact or the court***".

The burden of onus of proof carries two (2) separate elements

(1) Providing evidence satisfactorily on any particular fact in issue and

(2) Persuading the trial of fact that the matter alleged is not valid.

The burden of persuasion may require a party to raise a reasonable doubt concerning the existence or non-existence of a fact by a preponderance of the probabilities or by proof beyond a reasonable doubt. It is pertinent to observe that in all civil claims, the standard of proof is by a preponderance of probability. See Section 10(2) of the Evidence Act 1975 (Act 323)

S. 12(2) of Act 323 defines Preponderance of probabilities as the ***"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 Plaintiff was able to demonstrate positively that Defendant harassed and threatened him and his grandson.

Before resolving this issue, it would be prudent to determine whether the Plaintiff has the requisite capacity to sue for and on behalf of his grandson.

It is trite that a person with a lawful claim can commence an action in person or through a lawyer. If a party sues for himself and in a representative capacity, this fact must be indicated on the writ of summons. The essence is to let the Defendant know the personality they are dealing with.
Order 9 Rule 1(1) of the District Court Rules, 2009 (C.I 59) reads that; ***"If a Plaintiff sues or a Defendant is sued in a representative capacity, this fact shall be stated on the writ."***

When is a party said to lack capacity? A party is said to need more capacity where there exists some procedural issue relating to his competence to bring or defend an action. This may include disability (age, mental capacity), principles of representation as in representative proceedings, and suits by or against the family, among others. See the case of **GEORGE AGYEMANG SARPONG V. GOOGLE GHANA AND GOOGLE INCORPORATED LLC (2016) JELR 63893 (CA)**
In the case of **REPUBLIC V. HIGH COURT, ACCRA, EX-PARTE ARYEETEY, (ANKRAH INTERESTED PARTY) [2003 – 2004) SCGLR 398 AT 405, per Kpegah JSC**,*"... if a party brings an action in a capacity he does not have, the writ is a nullity and so are the proceedings and judgment founded on it. Any challenge to capacity, therefore, puts the validity of the writ in issue."*

In the instant case, the Plaintiff cannot seek judicial enforcement of the relief for his grandson. This is because Plaintiff lacks capacity. He needed to have indicated the representative capacity in which he sues for himself and his grandson. His failure to do so limit the jurisdiction of the Court to determine the merit of whether Defendant harassed Plaintiff's grandson, Thomas Kwaw, on the seven-acre cocoa farm Plaintiff cultivated on his father's land at Adiewoso.

Further, Plaintiff alleged that Defendant threatened him. The court's criminal jurisdiction to deal with the threat of harm has not been properly invoked. The Plaintiff should file a complaint with the police for investigation and possible prosecution. Thus, the court is not inclined to decide on the alleged threat of harm. Issue 1 is therefore resolved against Plaintiff.

ISSUE 2 &3

2) Whether or not Plaintiff is the owner of the land on which Defendant cultivated the rubber plants
3) Whether or not Defendant be injuncted from Plaintiff's seven-acre cocoa farm.

As to how he came by the farmland, Plaintiff says it was gifted to him by his father. This was denied by the Defendant and her witnesses, who contend that it belonged to Opanyin Agyarko and Maame Ayisah. Opanyin Agyarko gave it to all his children to farm on. Thus, the farmland acquired the status of family property.

By this denial, I am informed that Plaintiff's title had been put in issue. He could discharge it by positively identifying the area in dispute, calling his boundary owners to testify, producing documentary evidence or, instead, should have called witnesses to give a vivid account of how he came to own the farmland. What the Plaintiff did was only to mount the witness box to say that his father had gifted the land to him about thirty years ago. How and when it was gifted, he did not tell the court.

In law, a party cannot succeed when he only mounts the witness box to repeat his averment on oath. Thus, in **MAJOLAGBE V LARBI (1959) GLR 190 at 192,** the principle was stated as follows: ***"where a party makes an averment capable of proof in some positive way, example by producing documents, description of things, reference to other facts, instances of circumstances and***

his 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 his witness. He proves it by producing other evidence of facts and circumstances from which the court can be satisfied that his avers are true."

This dictum was explained a decade later by Akuffo-Addo, CJ in **J. SABA & CO LTD V WILLIAMS (1969) CC 52 CA** to the effect that that dictum was no authority for the proposition that a judicial tribunal cannot decide on issue on the evidence of one witness or the oath of one person against another. The dictum can only mean an averment such as, by its very nature, requires to be proved by other means than a mere assertion on oath.

Be that as it may, I think that Plaintiff's failure to adduce sufficient evidence that the farmland on which Defendant cultivated her rubber farm is his personal property is fatal to his case. In **BUDU V AGBI (1972) 2 GLR 238,** it was held that failure by Plaintiff to establish their northern boundary was fatal to their claim.

In the instant suit, the Defendant adduced abundant evidence to establish that the disputed farmland is family property. Plaintiff could not demonstrate that the disputed land on which Defendant cultivated the rubber farm is his personal property. Instead, it is family property, of which he is the custodian. Thus, this issue is equally resolved against the Plaintiff.

The final issue for determination is whether or not Defendant should be injuncted from Plaintiff's seven-acre cocoa farm. Although Plaintiff did not include a declaration of title over the seven-acre cocoa farm in the relief sought, he seeks an order to injunct Defendant, her assigns and privies from same.

In the case of **ADISA BOYA V ZENABU MOHAMMED (SUBSTITUTED BY ADAMA MOHAMMED) & MUJEEB (2018) JELR 68884 (SC)**, the Defendants did not seek an order for a declaration of title. Still, their title was put into issue as there was a claim for perpetual injunction directed against their continued occupation of the disputed property. The Court determined the Defendant's title to avoid the same issue being re-litigated in the future. The Court further held as follows ***'Indeed, we are enjoined as judges to avoid multiplicity of actions by the very clear words of Order 1 rule 2 of the High Court (Civil Procedure) Rules, 2004, CI 47 which are as follows: "These Rules shall be interpreted and applied so as to achieve speedy and effective justice, avoid delays and unnecessary expense, and ensure that as far as possible, all matters in dispute between the parties may be completely, effectively and finally determined and multiplicity of proceedings concerning any of such matters avoided." The legislative wisdom contained in the above provision which is the overriding principle in civil procedural rules in the High Court cannot be overridden by slavish adherence to mere technicality; our primary concern as judges being to do substantive justice.'***

Similarly, Order 1 Rule 2 of the District Court (Civil Procedure) Rules, 2009, CI 59, cautions magistrates to ensure expeditious trials and avoid a multiplicity of suits. After all, litigation must end, and substantive justice must prevail over strict adherence to technicalities. However, Plaintiff did not specifically seek an order for declaration title. But by the issues that turned on the pleadings, the Plaintiff's title was put in issue as there is even a claim for perpetual injunction directed against the Defendant. To avoid the same issue being re-litigated in the future, the court will determine whether the seven-acre cocoa farm is Plaintiff's personal property and, if so, whether Defendant, her assigns and privies be injuncted from the same.

The plaintiff did not adduce sufficient evidence to prove the seven-acre cocoa farm's existence and that the farmland is his personal property. Without proof that the seven-acre cocoa farms belong to Plaintiff, the Court will not be able to injunct Defendant, her assigns and privies from the said cocoa farm. Instead, the Court makes a finding of fact that the disputed farmland on which Defendant cultivated her rubber is family property over which Plaintiff is the Custodian.

The law is that "***a person who would lose if no evidence or no further evidence is led is the person upon whom the onus lies to prove the fact he alleges***". See the case of **Bank of West Africa Ltd. V. Akun** (supra). The Plaintiff has failed to prove all the facts he alleged; thus, the reliefs sought before this court fail.

Cost is assessed at GH¢3,000.00 for the Defendant against Plaintiff.

(SGD.)

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H/W AWURAMA D. DARKWAH

(DISTRICT MAGISTRATE)