

IN THE DISTRICT COURT, DROBO BONO REGION

SUIT NO. BR/DR/DC/A1/10/20

NANA OKOFO DARTEY;THE ABAKOMAHENE --- PLAINTIFF

OF ADOMABIA FAMILY OF ATUNA

VRS

OSOFO APPAU OF ATUNA

---- DEFENDANT

JUDGMENT

DELIVERED BY H/W LINDA E. NYAHE ESQ. (MAGISTRATE)

DATED: 23/08/2024

IN THE DISTRICT COURT HELD AT DROBO ON TUESDAY THE 23RD DAY OF AUGUST 2024 BEFORE HER WORSHIP LINDA E. NYAHE, ESQ. (DISTRICT MAGISTRATE).

SUIT NO. BR/DR/DC/A1/10/20

NANA OKOFO DARTEY; THE ABAKOMAHENE ---- PLAINTIFF
OF ADOMABIA FAMILY OF ATUNA

VRS

OSOFO APPAU OF ATUNA ---- DEFENDANT

PARTIES-PRESENT

MOSES K. OBAH ESQ FOR THE DEFENDANT -PRESENT

JUGDEMENT

Plaintiff is a farmer and resides at Atuna whereas the Defendant is also a farmer and resides at Atuna. The Plaintiff by his Writ of Summons filed on 22/01/2020 claimed against the Defendant as follows;

- a. Declaration of title and recovery of possession of that entire land being, lying and situate at a place commonly known and called "P3wode3" near Atuna on Atuna Stool Land bounded by the properties of; late Op. Kofi Dartey, late Op. Koo Nyame, late John Yaw Ankwa, late Op. Kwasi Akwan and late Nana Kwasi Tuntum.
- b. GHC2000.00 Damages for trespasses.

- c. An order for perpetual injunction restraining the Defendants (sic), their agents, assigns, heirs, labourers, workmen and all those claiming through them from interfering the Plaintiff's activities on the land.

I find it worthy and necessary to mention that this case started before my predecessor, His Worship Hans Kpogo. I took over upon my assignment to the Court and adopted proceedings as a matter of procedure and continued the trial of the case. Also, counsel for the Defendant filed written address on 26-07-24 for and on behalf of the Defendant.

FACTS OF THE CASE

The Plaintiff's case as per his Statement of Claim is that the disputed land was originally acquired by his late grandfather Nana Yaw Donkor in its virgin state. That the disputed land is located at a place commonly known and called "P3wode3" near Atuna on Atuna Stool land bounded by the properties of late Op. Kofi Dartey, Op. Koo Nyame, Late John Yaw Ankwaa, Late Op. Kwasi Akwan and late Nana Kwasi Bosomtwe @ Tuntum. Plaintiff averred that the late Nana Yaw Donkor prior to his demise distributed his self-acquired properties to his family and granted the land in dispute to his nephew late Nana Otuoni Bosomtwe. Plaintiff stated that Nana Yaw Donkor was then the Head of the Adomabea Family after late Nana Kofi Bosomtwe. Plaintiff further averred that the late Nana Yaw Donkor was succeeded by late Nana Otuoni Bosomtwe by customary succession and the land in dispute devolved on him. Plaintiff contends that he succeeded late Nana Otuoni Bosomtwe after his demise about thirteen (13) years ago as the Head of the Adomabea Family and as a result the land in issue devolved on him. **It is Plaintiff's case that about eight (8) years ago, the Defendant approached him (Plaintiff) for a piece of land to establish a prayer camp. Plaintiff said because of the cordial relationship that existed between him and the Defendant, he (Plaintiff) granted a piece of land to the Defendant to establish his said prayer camp.** Plaintiff said that about the same time, he was in active service as a civil servant stationed at the Jaman South Municipal Assembly. Defendant as a result,

took advantage of his absence and cultivated scattered teak, palm plantation and cashew on the land. That when his attention was drawn to it, he approached the Defendant and told him to stop cultivating on his (Plaintiff) land but the Defendant will not stop. It is the Plaintiff's case that, the Defendant has encroached on his land and is laying adverse claim to it. That all efforts to compel the Defendant to leave vacant possession of the disputed land have proven futile hence the instant action.

The Defendant on the other hand, denied the averments of the Plaintiff. The Defendant averred in his statement of defence that the land he is in possession of is situate along "Atuna P3wodie" Road on Atuna Stool Land and bounded by the properties of the late Nana Osei Kofi (now in possession of Nana Kwame), the late Nana Kofi Antwi alias Wahas; Lucy Adobea; the late Queenmother of Atuna, Nana Yaa Kokwaa (now in possession of her children) and late Maame Yaa (now in possession of her children). The Defendant averred the land he is in possession of was originally acquired by the late Nana Bosomprah, the 3rd Chief of Atuna Stool in its virgin state. The Defendant stated that during the lifetime of the said Nana Bosomprah, he cultivated the land currently in his possession with food crops like yam. Defendant averred that upon the demise of Nana Bosomprah, he was customarily succeeded by the late Nana Kwasi Akwan who inherited the land in his possession. That when the said Nana Kwasi Akwan inherited the land in his possession, he cultivated it for some time with food crops like yam, plantain and cassava. Defendant contended that sometime later, after Nana Kwasi Akwan had cultivated land in his possession for a while, he then gifted same to him and his sister, one Lucy Adobea about 30 years ago. The Defendant stated that after the gift of the land he provided "aseda" in the form of 2 bottles of schnapps, 3 bottles of coke and C1,500,000.00 in the presence of credible witnesses. Defendant averred that subsequent to the gift of the land, he entered into possession together with his sister by initially cultivating maize. That in the year 2000, he and his said sister Lucy Adobea started the cultivation of cashew on the land. Later, he and his sister cultivated cocoa, palm, teak and cedrella trees on the land and same is currently on the land in

addition to a piggery. The Defendant further averred that, he put up two (2) bedroom house on the land but it was demolished by one Adwoa Fordjour. The Defendant averred that he has an uncompleted house as well as a prayer camp on the land. Defendant reiterated that the land he is in possession is the property for him and his sister and he has been in effective and unchallenged possession of the land for about 30 years. That the Plaintiff is estopped by statute, laches and acquiescence from laying adverse claim to the land. That on 7th July, 2012, one Adwoa Fordjour commenced a court action against him in respect of the land in dispute. Whilst the matter was in Court, it was withdrawn for settlement. Terms of settlement was executed and adopted by the Court as consent judgement in respect of the land in his possession and title to same was declared for him. That the Plaintiff is a privy of the said suit and is estopped per res judicata from mounting another action in respect of the same land. The Defendant therefore prayed that Plaintiff is not entitled to the reliefs he sought.

BURDEN OF PROOF

It has been established in a number of cases that the burden of proof in an action for declaration of title to land rest on the Plaintiff.

This principle is amply captured in the case of **AGO SAI & OTHERS V KPOBI TETTEH TSURU III [2010] SCGLR 762 at 779** where Ansah JSC had this to say: *“This being an action for declaration of title to land, the burden of proof and persuasion remained on the Plaintiffs to prove conclusively, that on the balance of probabilities, he was entitled to his claim. This could be done by proving on the balance of probabilities the essentials of their root of title and method of acquiring title to the area in dispute, the Obojo lands.”* Also see the cases of **FOSUA & ADU-POKU V DUFIE (DECEASED) & ADU POKU –MENSAH [2009] SCGLR 310 AT 325-327, ABBEY & OTHERS V ANTWI [2010] SCGLR 17 AT 23-24.**

The standard of proof required of a party who makes assertions which are denied, is one on a balance of probabilities. This therefore requires a party making assertions to adduce such evidence in proof of the assertions, such that the court is convinced, that

the existence of the facts he asserts are more probable than their non-existence. **Section 11(1) & (4) of the Evidence Act, 1975 (N.R.C.D 323)** provides that:

Section 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.*

Section 12 of the Evidence Act, 1975 (N.R.C.D 323) provides that:

Proof by a preponderance of probabilities

12(1) *except as otherwise provided by law, the burden of persuasion requires proof by a preponderance of probabilities.*

(2) *“Preponderance of probabilities” means that degree of certainty of belief in the mind of the tribunal of facts or the court by which it is convinced that the existence of a fact is more probable than its non-existence”.*

In explaining the principles relating to the duty to produce evidence, S.A Brobbey JSC. states at page 31 of his book **Essentials of the Ghana Law of Evidence** thus;

“This literally means the proof lies upon him who affirms, not on him who denies, since by the nature of things, he who denies a fact cannot produce proof. Where Plaintiff makes a positive assertion at the start of the trial, he bears the legal burden. At the same time, he bears the evidential burden to adduce evidence at the start of the trial.”

In the case of **MAJOLAGBE V LARBI AND OTHERS [1959] GLR 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.”

EVIDENCE ADDUCED BY THE PLAINTIFF

At the trial, Plaintiff relied on his witness statement filed on 26/6/2020 as his evidence-in-chief. Plaintiff testified that he is the Abakomahene of Adomabea family of Atuna. According to him the land in dispute is one of the self-acquired properties of his late grandfather Nana Yaw Donkor. Prior to his demise, Nana Yaw Donkor distributed his self-acquired properties to his family and granted the land in dispute to Kwadwo Asare of Adomabea Family of Atuna Traditional Area who registered the land in his name. He attached a copy of a document containing a plan of the said land and it was tendered into evidence and admitted and marked as Exhibit A. According to him, Kwadwo Asare was later enstooled the Head of the Adomabea Family of Atuna Traditional Area with the stool name Otuoni Bosomtwe. Thus, the late Nana Yaw Donkor was succeeded by Nana Otuoni Bosomtwe by customary succession and the land in dispute devolved on him. Plaintiff contended that he also succeeded Nana Otouni Bosomtwe after his demise about 13 years ago as the head of the Adomabea Family and as a result the land in issue devolved on him accordingly. **He continued that about 5 years ago the Defendant approached him for a piece of land to establish a prayer camp and because of the cordial relationship between them, he granted a piece of land to Defendant to establish the prayer camp. However, the Defendant took advantage of his absence about five (5) years ago while in active service as a civil servant in Jaman South District Assembly and cultivated teak and cashew on**

the land without his consent and is now laying rivalry claim to the land. Plaintiff called two witnesses thus Michael Adusah (PW1) and Michael Adjei (PW2).

PW1, Michael Adusah testified that the disputed land forms part of a vast land originally acquired by his late father Op. Yaw Donkor. His late father carved a portion of his land including the disputed area and gifted same to his nephew Otuoni Bosomtwe (Kwadwo Asare) the then Atuna Nifahene for the Nifa Stool of Atuna. That his late father's nephew (Kwadwo Asare) perfected the gift by offering "aseda" and later caused the execution of a site plan to cover the land. That the land his late father gifted to his nephew is bounded by the properties of late Op. Kwesi Akwan currently in the possession of Defendant herein, late Op. Kwasi Bosomtwe currently in possession of the Defendant, (sic) late op. Kofi Dartey currently in possession of his children, Op. Kwadwo Nyame and late Op. Yaw Ankwaah currently in possession of his children. He further testified that in 2013, one Adwoa Fordjour instituted civil action against the Defendant herein for encroachment of her land. The subject matter was a piece of land less than one acre. He continued that, the land was in fact acquired by the late father of the said Adwoa Fordjour, Op. Kwasi Bosomtwe. According to PW1, he applied for the matter to be remitted for out of Court settlement. That he together with others sat on the matter. That after hearing the parties; thus Adwoa Fordjour and Defendant, it became obvious that the land formed part of Adwoa Fordjour's father's land that was cut off during the construction of the "P3wode3" road. In order to end a dispute on the land which is less than one acre. It was decided that the land be granted to the Defendant where he (PW1) voluntarily carved a portion of his land to the said Adwoa Fordjour. That when they visited the land, there were boundary features on the land which shares boundary with Plaintiff's land and the Defendant has gone beyond the said boundary features and encroached on Plaintiff's land. **That the land devolved on Plaintiff by customary succession as head of the Nifahene of Atuna Traditional Area.**

PW2, Michael Adjei also testified that his late father Yaw Ankwaas land shares boundary with the properties of Kofi Dartey, Kwadwo Nyame and Kwadwo Asare. According to him, he used to follow his late father to the farm and after his demise, the family granted the land to him and his siblings. He continued that the land in dispute forms part of the vast land originally acquired by the late Op. Yaw Donkor. That his late father informed him that Op. Yaw Donkor carved a portion of his land and gifted same to his nephew late Kwadwo Asare and that land is the subject matter of this suit.

EVIDENCE OF DEFENDANT

The Defendant relied on his witness statement as his evidence in chief. He did not call any witness although he had caused witness statement to be filed for a witness. The evidence of the Defendant is a rehash of his Statement of Defence. The Defendant tendered into evidence a copy of the terms of settlement which was adopted by the Court by which judgment was entered for him for ownership and possession of the land in his possession and same admitted into evidence as Exhibit 1.

ISSUES

The issues identified by the Court are as follows;

- a. Whether or not the Plaintiff has demonstrated that the land he claims ie. the land in dispute belongs to him.
- b. Whether or not Plaintiff is entitled to his reliefs

LEGAL ANALYSIS AND EVALUATION OF EVIDENCE

Whether the Plaintiff has demonstrated that the land he claims belongs to him

Plaintiff is seeking a declaration of title in the land for himself and so he has to show that the land in dispute belongs to him. However, from the responses elicited from Plaintiff during trial, he told the Court that the land is a family property in one breath.

In another breath, he told the Court the land in dispute is the personal property of Kwadwo Asare (Nana Otuoni Bosomtwe).

I seek to reproduce the responses elicited from Plaintiff during cross-examination on 14/08/2020 as follows;

Q. Is it your case that the disputed land is the property of the late Kwadwo Asare?

A. No

Q.Does Exhibit A cover the disputed land?

A. Yes

Q. Exhibit 'A' which according to you covers the disputed land on the face of it says that the land is the property of Kwadwo Asare. Do you still stand by it?

A. Yes but it originally belonged to our grandfather, Nana Yaw Donkor which he gave to Kwadwo Asare in the name of the stool for the family.

During cross-examination of Plaintiff on 11/09/20, Plaintiff told the Court that the disputed land is for Kwadwo Asare contrary to his earlier assertion. The following ensued;

Q.Who do you claim is the owner of the disputed land?

A.It belongs to Kwadwo Asare a.k.a Otuoni Bosomtwe

Q. So you want this Court to declare Kwadwo Asare as the owner of the disputed land, is that not so?

A. Yes, it belongs to him

Q. I put it to you that the disputed land has never been the property of Kwadwo Asare?

A. That is not true.

The inconsistencies in Plaintiff's case become more glaring as the trial unfolded. For instance, the following ensued during cross-examination of Plaintiff;

Q. I put it to you that the disputed land has never been the property of the Adomabea family.

A. Yes, I concede

Q. I put it to you that the disputed land is not the property of Kwadwo Asare

A. It is his property once the family has given it to him

Q. I put it to you that no family has ever given the disputed land to Kwadwo Asare

A. It is the family which gave the land to Kwadwo Asare and there are witnesses to that effect

Q. On account of the answer you gave you were not truthful when you said it was Nana Yaw Donkor who gave the land to Kwadwo Asare.

A. My reference to the family is because Yaw Donkor was the head of family and so he represents the family.

Q. Do you have a personal property?

A. Yes

It is not really clear who the land belongs to as per the evidence of Plaintiff. All the same, it is clear is that Plaintiff does not own the land in dispute as he wants the Court to believe.

By the endorsement on the writ of summons as well as his pleadings the Plaintiff is claiming declaration of title to the land in dispute for himself and not on behalf of any person or a family.

During cross-examination of the Plaintiff, he admitted that he was not the head of family contrary to his evidence precisely paragraph 10 of his witness statement which later became his evidence that he succeeded Nana Otuoni Bosomtwe after his demise about 13 years ago as the Head of the Adomabea Family. I seek to reproduce the relevant portions of Plaintiff's responses under cross-examination as follows;

Q.You claim you are the head of the Adomabea Family

A.I am the Abakomahene. I am not the head of family

Q. What is the name of the head of family?

A. He is called Issifu Adams

Q. You want this Court to believe that you have never succeeded Otouni Bosomtwe whose name in private life is Kwadwo Asare as the head of the Adomabea Family?

A. I have not succeeded him.

Q.And you told this Court that the head of the Adomabea Family is presently one Issifu Adams.

A.Yes, he is the current head of family?

Q. Where is Issifu Adams as we speak now?

A. He is at Atuna but he left for Sefwi to attend to his farm.

From the above not only did Plaintiff admit that he is not the head of family. He also told the Court that he is also not the customary successor of the said Kwadwo Asare (Nana Otuoni Bosomtwe).

The issue which rears its head is whether the Plaintiff has the requisite capacity to sue having made it clear that the land in dispute is not his personal property but rather the family of which he is neither the head of family nor customary successor. For if he had

even sued having the capacity, the Court would have considered suo moto amending the title in order to do substantial justice considering that the Plaintiff is unrepresented but such is not the case.

The law on the issue of capacity is well settled. In the case of FOSUA & ADU POKU V ADU POKU-MENSAH (2009) SCGLR 310 at 337 the Court held as follows;

“It is therefore unfortunate the trial judge did not consider the issue of capacity anywhere in his entire judgement. When he considered whether or not the properties in dispute were for the family, he should have gone forward to also consider if they were family properties, then whether or not the plaintiffs were clothed with the requisite capacity to sue in respect thereof. That was irrespective of whether or not the parties made that an issue for trial. Capacity to sue was a matter of law and could be raised by a party at any stage of the proceedings, even on appeal. It can be raised by the court *suo motu*.”

It was held in REPUBLIC V. HIGH COURT, ACCRA; EX PARTE ARYEETEEY (ANKRAH- INTERESTED PARTY [2003-2004] Vol. 1 SCGLR 398 particularly holding 2 that;

“The requirement that a party endorses on the writ the capacity in which he sues, is to ensure that a person suing in a representative capacity is actually invested with that capacity and therefore has the right to sue. Whether a person who has sued in a representative capacity, indeed, has the capacity he claims to have or not, is a question of fact; and if challenged, he must prove same to avoid his suit being dismissed since it is analogous to taking an action against a non-existent defendant. But if the representative capacity he claims is not challenged, naturally a plaintiff assumes no such burden. The requirement as to endorsement of the capacity of suing, enables the defendant, if he so minded, to challenge the capacity the plaintiff claims he has, and such a challenge may be taken as a preliminary issue. This is

because if a party brings an action in a capacity he does not have, the writ is a nullity and so are the proceedings and the judgment founded on it. Any challenge to capacity puts the validity of the writ in issue.”

Again in EX PARTE ARYEETAY case (supra) at page 405 the Supreme Court speaking through Kpegah JSC said:

“..... Any challenge to capacity therefore puts the validity of the writ in issue. It is a proposition familiar to all lawyers that the question of capacity, like the plea of limitation, is not concerned with merits so that if the axe falls, then a defendant, who is lucky enough to have the advantage of the unimpeachable defence of lack of capacity in his opponent, is entitled to insist upon his rights: see *Akrong v. Bulley* [1965] GLR 469, SC.

From, the issues arising and the authorities cited above the Court is mandated to look into the issue of capacity and decide whether Plaintiff is clothed with the requisite capacity to institute the instant suit.

In the authoritative case of **KWAN V. NYIENI AND ANOR [1959] GLR 67 at P.72**

The Court held that it is the head of the family who is the proper person to sue for the recovery of family property. But to the principle are exceptions, as for instance where family property is being lost to the family, or where because of a division in the family the head will not act to save the property from being lost, or where the head and principal members are intentionally disposing of the property in such a manner as to be detrimental to the whole family. In any of the foregoing events the Court is likely to entertain the suit by any member of the family, subject of course to the Court being satisfied that the ultimate objective is the preservation of the family character of the property.

In the case of DOTWAAH V AFRIYIE [1965] G.L.R 257, it was emphatically stated by the apex Court that by customary law the self-acquired property of a deceased member of a family vest in the customary successor with responsibility to litigate the family's title to such property. Similarly, the same principle was reiterated by the Supreme Court in AKRONG V. BULLEY [1965] GLR 469. SEE; The case of AUGUSTINE MANU V ELIZABETH NSIAH [2005] SCGLR 25 at 30-31

From the foregoing, the proper person to have sued is the head of family whom Plaintiff and PW1 identified or the customary successor of Kwaku Asare. It is worth noting that Plaintiff has also not been able to establish that the exceptions laid down in Kwan V Nyieni applies to him in this case. The Court is of the view that on this first point of call; that is capacity to sue, Plaintiff has failed to satisfy the Court that he has the capacity/locus standi to sue.

Still on the issue of capacity, Plaintiff's testimony that he customarily succeeded Kwaku Asare as head of Adomabia family which turned out to be false, conflicted with the PW1's testimony. The PW1 told the Court that the land devolved on Plaintiff as the head of the Nifahene of the Atuna Traditional Area even though Plaintiff testified he is the Abakomahene. Subsequently during cross-examination PW1 proved to be a witness of no credibility when he admitted under cross-examination that Plaintiff is not the Nifahene. See the responses of PW1 under cross- examination as follows;

Q. Is it your case that the disputed land was reserved for the stool for by Yaw Donkor?

A. Yes, my lady he reserved the land for Kwadwo Asare for the occupancy of the stool. After the death of Nana Asare, the plaintiff took over.

Q. Kwaku Asare during his lifetime was the Nifahene

A. Yes.

Q. So it is your case that the disputed land was reserved for Nifa Stool?

A. Yes

Q. You agree with me that the plaintiff herein is not the occupant of the Nifahene?

A. No, he is the Abakumahene

Q. Who is the present Nifahene of Atuna Stool?

A. He is Barimah Ankwaa Ofori

Q. Have you heard of the family called Adomabia family of Atuna?

A. Yes and that is Op. Yaw Donkor's family.

Q. Do you know the head of the Adomabia family?

A. He is Issifu Adams or Alhaji

It has been held in the case of ATADI V. LADZEKPO (1981) GLR 218 particularly part 3 that; **“whenever the testimony of a party in a crucial issue was in conflict with the testimony of his own witness on that (as the case of respondents in the instant case) it was not open to a trial court to gloss over such a conflict; and make a specific finding on that issue in favour of the party whose case contain such conflicting evidence on the issue.”**

In fact, the evidence of Plaintiff's witnesses did worsen the Plaintiff's already bad case. As earlier stated, responses elicited from PW1 showed that he is not a credible witness. Moreover, he admitted under cross-examination that the land in dispute is the same land which Defendant was declared owner in an earlier action. This admission clearly supported the Defendant's version that the disputed land he is in possession of is the one for which consent judgement was entered in his favour. In the case of ACHORO &

ANOR v. AKANFELA & ANOR [1996-97] SCGLR 209 at 214 where the Supreme Court held:

“.... For the law is settled that where the witness of a party supports the evidence of that party’s opponent on material issues, such as in the instant case, the party who called the witness should lose the contest on that material issue. SEE *Trifo v Duah VII (1959) GLR 63; and Banahene v Adinkra (1976) 1 GLR 346 CA.*”

PW1, when asked to mention the boundary owners of the land could not state the boundary owners. He could not also tell the Court where the land is situate. The location differed from where the Plaintiff stated the land is situate

The following ensued during cross-examination of PW1 by counsel for Defendant

Q. Do you know the identity of the land for which Plaintiff has sued the Defendant?

A. Yes, I know

Q. Mention the boundary owners of the disputed land?

A. Currently the Plaintiff and the Defendant are sharing a common boundary.

Q. I put it to you that you don’t know the identity of the land for which Plaintiff has called you to testify in this Court

A. I know

Q. You will agree with me that the disputed land in possession of the Defendant was acquired by the late Nana Bosomprah?

A. That is not correct

Q. What is the name of the place where the disputed land is situated?

A. Kwayemu

The evidence of PW2 took the form of a hearsay. It is therefore not surprising that he did not know anything about the land.

I seek to re-produce the responses of PW2 who claimed to be a boundary owner under cross-examination. The cross-examination was a terse one. I seek to reproduce same as follows;

Q. You claim you know the disputed land?

A. My father shares boundary with the disputed land but with respect to the portion where they are litigating over, I don't know

Q. Do you know the boundaries of the disputed land?

A. I don't know all the boundary owners

Q. Do you know the history of the disputed land?

A. No. I don't know the history

Q. The only reason why you are here is that your late father's land shares common boundary with the disputed land?

A. That is so

Q. As regards, which people have been in possession all these years, who acquired the disputed land, who succeeded the disputed land, you know nothing about it?

A. That is so.

Clearly, the inconsistent nature of the case put forward by the Plaintiff and his witnesses weakened the merits of his case. As rightly pointed out by counsel for Defendant in his written address. Plaintiff's summary of claim was at variance with his pleadings when he stated in the summary of claim that the land was originally acquired by his grandfather Nana Kofi Bosomtwe. Some portions of his pleadings were also at

variance with his evidence before the Court. In **OBENG V. BEMPOMAA [1992-93] G.B.R. 1027 CA**, the Court of Appeal held: **Inconsistences, though individually colourless, may cumulatively discredit the claim of the proponent of the evidence. The conflicts in the evidence of plaintiff and the witnesses weakened the merit of his case and proved fatal to his claim."**

Finally, concerning the issue of the identity of the land both parties' boundary owners were different. Meaning the parties are not ad idem on the identity of the land. As counsel rightly stated in his written address, it behooved on the Plaintiff to persuade this Court that the land being claimed by him is the same land being claimed and occupied by the Defendant. However, when Plaintiff was given the opportunity to cross-examine the Defendant herein, he failed to address the said issue. He could have also called boundary owners to testify or produced positive evidence to prove the identity of the land he claims. Again, Plaintiff failed woefully to satisfy the Court on the identity of the land he claimed.

Aside Plaintiff lacking capacity, no piece of evidence showed that the land in dispute is for the said Adomabea family or for Kwadwo Asare. Plaintiff has not also shown that he has any right to deal with the property in dispute. Considering the evidence in totality, Plaintiff failed to discharge the burden of proof. He lacked capacity to have filed the instant suit in the first place. Accordingly, his case fails in its entirety and same is hereby dismissed.

Cost GH¢8,000.00 is awarded against the Plaintiff in favour of Defendant to cover his legal expenses

.....SGD.....

HW LINDA ENYONAM NYAHE (ESQ)

MAGISTRATE