

15/01/24

IN THE DISTRICT MAGISTRATE COURT HELD AT AKROPONG ASHANTI ON
FRIDAY THE 15TH DAY OF JANUARY, 2023. BEFORE HIS WORSHIP ROCKSON A.
K. KPODO ESQ. DISTRICT COURT MAGISTRATE.

SUIT NO. A1/39/21

MARY OWUSU

PLAINTIFF

VRS.

BROTHER YEBOAH & 2 ORS

DEFENDANT

JUDGMENT:

Plaintiff claims against defendant, declaration of a building plot situates at a place commonly known and called Nkawie sepaase main road which building plot defendant is claiming ownership.

The court would rely on plaintiff's statement of claim as his case since she failed to file his witness statement.

In her statement of claim, plaintiff says that the disputed plot of land forms part her 1.73 acres of land, on which her grandmother, Akua Agyeiwaa, cultivated cocoa in the past, situate and lying at sepaase in the Atwima Nwabiagya Municipality, which

shares boundaries with Hyewu Besiase junction, River Asuyeboah, River Dwuahen and the main Sepaase road.

Plaintiff added that the said grandmother gave birth to 4 children; 2 males and 2 females, amongst which plaintiff's mother is the eldest and that her mother, Akua Seenti told her that the two male children died before plaintiff was born and that her mother and another sibling, Yaa Dufie were helping their mother in cultivating the cocoa farm and that when she was also 11 years old, she was accompanying her mother to her mother's cocoa farm.

According to plaintiff in her grandmother's lifetime her mother and her sister Yaa Dufie were also cultivating other parts of the said land in dispute and they continued to cultivate the land after their mother died somewhere in 1961.

Plaintiff added that after the death of their grandmother she and her other 4 siblings and Yaa Dufie's 5 children, being her cousins, were still cultivating the said parcel of land that even after the death of her mother her only surviving elder brother, Kojo Mensah, cultivated palm plantation on the portion of the land their mother used to cultivate and that as she has to follow her husband who was a police officer on transfer duty post she left the entire land in the hands of her brother Kojo Mensah.

Plaintiff avers that later her elder brother showed her part of the land which cultivates currently, being her share of her share of her mother's land and that after the death of her elder brother in 2001 she entrusted the whole land in the hand of one Kwabena Mensah who cultivates rice and cassava on same and that she enjoyed peaceful possession of the whole land from 1994 to 2016 when the caretaker informed her that defendant has trespassed on same.

Plaintiff concluded that sometime ago, when he and his cousin justice Matthew Kyeremanteng confronted defendant and questioned him about the land he said that it was the unit committee member who granted the land to him but when they met the unit committee member, he also said that he granted only 10 feet of the land to defendant for the pig rearing, hence they warned the defendant to remove the wooden structure from the land, and warned him never to set his foot on the said land again.

Plaintiff added that defendant took advantage of her ill health to extend the land and told her that it was the NADMO and the ENVIRONMENTAL HEALTH DEPARTMENT WHICH granted the land to him and that defendant has no defense to the claim.

PW1 corroborated the evidence led by plaintiff in his witness statement and added that when plaintiff finally returned home his uncle asked him to possess all the 1.73 acres of land which is currently in dispute.

In his defense, 1st defendant says that it was after he sought the approval of the Abusuapanin of Sepaase, Adusei Darko before he went on the land and later realized that it was a public land so he went to see the NADMO and the ENVIRONMENTAL HEALTH DEPARTMENT for their final approval to commence business on the land in dispute but later he was served with a document stating that the land belongs to plaintiff.

1st defendant concluded that he never saw any plantations on the land before and after his occupation of the said land.

DW1 added that when 1st defendant came to see him to assist him to acquire the said land to establish his business, he advised him to see Abusuapin Adusei after he checked and realized that the land in dispute is a waterlogged area and also get

approval from the relevant state agencies in the district, hence the 2nd and 3rd defendants being the relevant state agencies granted 1st defendant the approval to do the said business on the land, subject to periodic checks and review.

DW1 concluded that to the best of his knowledge the disputed land has never been a farmland or form part of any plantation and that the place has always been a marshy area and left bushy until 1st defendant went into occupation.

He added that he is aware the said land has been the subject of a suit at the High court and same was decided in favour of Abusuapanin Adusei.

DW2 added that he is the head of the Asona royal family of Sepaase who owns and controls all land in Sepaase and that this position was confirmed by the Otumfour Osei Tutu II, when he presided over an arbitration of Sepaase land, in 2009, and ruled that all lands in sepaase belongs to the Abusuapanin, Adusei Darko, DW2 herein. He attached the ruling as Exhibit A.

He added that another case which confirms the above position is the suit against Nana Kwadwo Opong III, Sepaasehene as the defendant and in a term of settlement they filed before the High Court in May 2010, it was agreed that the plaintiff in the case being DW2 should be the one who should grant all Sepaase stool land and he attached the ruling of the court marked B.

IT is again the case of DW2 that another judgment was entered for DW2 by the High court, entering judgment for the Sepaase Royal family as the owners of all Sepaase lands, in October, 2017 and same was attached and marked C.

DW2 concluded that being the Abusuapanin of the Asona royal family of Sepaase he has the right and authority deal with all lands within the jurisdictions of the sepaase stool.

He added that the land in dispute forms part of the governments road reservation lands which the state agencies have the authority to grant to people.

Upon hearing the evidence led by the parties herein the court hereby identifies the following issues for settlement:

1. Whether or not the land in dispute was granted to 1st defendant by the state?
2. Whether or not the land in dispute forms part of the land claimed by plaintiff as his?
3. Whether or not plaintiff is entitled to her claim?

Plaintiff claims that the land in dispute belongs to her family. He tendered in evidence the site plan covering her land. Defendant on the other hand claims that the land was granted to him by the Atwima Nwabiagya Municipal Assembly through the NADMO and the DISTRICT ENVIRONMENTAL HEALTH DEPARTMENT, hence they were joined to the suit as 1st and 2nd defendants.

There is overwhelming evidence before this court that the land in dispute was granted to the 1st defendant by the Atwima Nwabiagya Municipal Assembly, represented by the NADMO and the ENVIRONMENTAL HEALTH DEPARTMENT as 1st and 2nd defendants admitted same.

In fact, a sketch attached to 2nd and 3rd defendants' witness statement shows that the land the government agencies granted to 1st defendant measure 92 feet from the center of the new Abuakwa – Nkawie road to the 1st defendant's structure on the land in dispute.

At the locus in quo, plaintiff admitted that she has no problem with the area occupied by 1st defendant's structure occupies on the land since it is situate on the old Abuakwa – Nkawie old road.

The court is of the view from the above and from the locus report that the land 1st defendant occupies presently does not form part of the land plaintiff claims.

Thus, plaintiff has not been able to satisfy the fundamental legal principle of proving what she alleges in order to avoid a ruling against her.

In fact, at this stage the court would limit itself to the claims before it and the parties to the suit, hence the court would not touch on the dispute between plaintiff and DW2 as DW2 is not a party to the instant suit and as such all his documentary proofs are immaterial for the success of defendant's claim on grounds that:

1. DW1 is not a party to the suit.
2. DW1 did not grant any land to the 1st defendant

At this stage, the court is of the considered view that DW2 is only defending the reason why 1st defendant was directed by the Unit Committee member to see him for the land and why he also had the power to refer 1st defendant to the Municipal Assembly for the approval.

The court is of the considered view from the totality of evidence adduced so far that the land in dispute does not form part of plaintiff's family land since plaintiff has admitted at the locus in quo that she has no problem with the positioning of 1st

defendant's structures he erected on the land since they occupy the old Abuakwa – Nkawie road.

Thus, plaintiff has not been able to adduce sufficient evidence to discharge the burden placed on him by law of evidence in order to avoid a ruling against her as outlined in **section 11 (1) of the Evidence Decree, NRCD 323 of 1975** to the effect that:

'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'.

Defendants, on the other hand have been able to prove on the preponderance of probabilities that the land in dispute forms part of the state's road reservation land and not part of the land plaintiff claims.

Judgment is hereby entered for defendants on their claim.

Cost of 1000 is hereby awarded for each defendant against plaintiff.

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H/W ROCKSON A. K. KPODO