

**IN THE DISTRICT COURT 2, TAMALE HELD ON TUESDAY 26<sup>TH</sup> MARCH, 2024  
BEFORE HIS WORSHIP D. ANNAN ESQ.**

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**SUIT NO. A1/23/24**

**BETWEEN**

**ARNOLD BOREH**

**-**

**PLAINTIFF**

**AND**

**FELIX MWEYANG & ANOR.**

**-**

**DEFENDANTS**

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**JUDGMENT**

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**INTRODUCTION**

1. This judgment relates to land.
2. The parties here are resident in Tamale. Plaintiff through his lawyer instituted this action on 21<sup>st</sup> August, 2023 against the defendants for the following:
  - “a. Declaration that plaintiff is the owner of all that piece or parcel of land known as Plot No. 136 Block III Sagnarigu Residential Area in the Sagnarigu Municipal of the Northern Region of the Republic of Ghana bounded by plot nos. 137, 135 and the old Airport Road.
  - b. An order setting aside the purported sale of Plot no. 136 Block III to the 2<sup>nd</sup> defendant by the 1<sup>st</sup> defendant.
  - c. An order of perpetual injunction restraining the defendants herein, their principals or agents, assigns, heirs and all those claiming through them

from interfering with the quiet enjoyment of Plot no. 136 hereinabove described.

d. Recovery of possession.

e. Costs.”

3. The defendants were duly served with the Writ of Summons via substituted service on 13<sup>th</sup> September, 2023. Subsequently, the defendants were served with a copy of the plaintiff’s witness statement and hearing notice on 13<sup>th</sup> February, 2024. Despite due service on defendants, they have failed to attend court or filed any response to the plaintiff’s claim.

4. I shall deal with defendants’ failure to attend court or file any process later in this judgment.

#### PLAINTIFF’S CASE

5. The summary of plaintiff’s case is that in March 2022 he acquired Plot no. 136, Block III Sagnarigu Residential Area, the disputed land, from the 1<sup>st</sup> defendant. He explained that he paid GHS60,000.00 for the said plot and 1<sup>st</sup> defendant handed over the original allocation papers. Copy of the said allocation was tendered as Exhibit A. Plaintiff averred that he proceeded to acquire a new allocation from the skin whose jurisdiction the land falls. Copy of the new allocation was tendered as Exhibit B. Plaintiff added the he later caused a cadastral plan to be done regarding the said plot. Copies of the cadastral were tendered as Exhibits C and C1.

6. Plaintiff contended that on one of his regular visits to the disputed land, he noticed that 2<sup>nd</sup> defendant was erecting a wall on the said land. According to the plaintiff, he confronted the 2<sup>nd</sup> defendant, but 2<sup>nd</sup> defendant informed him that it was 1<sup>st</sup> defendant who sold it to him (2<sup>nd</sup> defendant). Plaintiff stated further that he summoned the 1<sup>st</sup>

and 2<sup>nd</sup> defendants to the Parang Chief Palace as well as the Choggu Naa Palace. Plaintiff indicated that the 1<sup>st</sup> defendant confirmed the sale to the 2<sup>nd</sup> defendant, but since his was earlier in time, the 1<sup>st</sup> defendant was requested to refund the money of the 2<sup>nd</sup> defendant. With hope that 2<sup>nd</sup> defendant will not show up at the disputed land again, it came as a surprise when he (plaintiff) noticed later that 2<sup>nd</sup> defendant had sent her workmen to the land and developing same. Copies of the 2<sup>nd</sup> defendant's workmen on the disputed plots were tendered as Exhibits D-D3. It is based on the actions of the defendants that the plaintiff now seeks the court's intervention regarding the aforementioned reliefs.

#### BURDEN OF PROOF AND ANALYSIS OF PLAINTIFF'S CLAIM

7. As earlier pointed out, the defendants were duly served with the court processes, but they failed to attend court or filed any process. The law regarding the defendants' inaction is that where a party fails to appear in court after due service on him, he is said to have deliberately failed to take advantage of the opportunity given him to be heard. The *audi alteram partem* rule cannot be said to have been breached. The court is entitled to proceed with the trial to conclusion and make deductions, draw conclusions or make findings on the basis of the evidence adduced at the trial, see the cases of **In re West Coast Dyeing Industry Limited: Adams v Tandoh [1984-86] 2 GLR 561, CA** and **Ankumah v. City Investment Co. Ltd. [2007-2008] 1 SCGLR 1068**. See also the case of **Republic v. High Court (Fast Track Division); Ex-parte State Housing Co. Ltd. (No. 2) Koranten-Amoako Interested Party, [2009] SCGLR 185** where Wood JSC (as she then was) stated authoritatively at page 190 as follows:-

“A party who disables himself or herself from being heard in any proceedings cannot later turn round and accuse an adjudicator of having breached the rules of natural justice.”

8. Based on the above, what is required of the plaintiff is that he must prove his case on the balance of probabilities, see ss. 11(4), 12(1) & (2) and 14 of NRCD 323. See also the cases of **Faibi v State Hotels Corporation [1968] GLR 471** and **In re Ashalley Botwe Lands; Adjetey Agbosu & Ors. v. Kotey & Ors. [2003-2004] SCGLR 420**. He must succeed on the strength of his own case and not on the weakness of the defendant's case, see **Odametey v Clocuh [1989-90] 1 GLR 14, SC**. In **Kodilinye v Odu [1935] 2 WACA 336**, the court puts it simply as "in case of doubt, ...the party who asserts must lose."
9. Now, having heard the plaintiff under oath and without any challenge from the defendants, I shall proceed as appropriate, see **In re West Coast Dyeing Industry Limited: Adams v Tandoh (supra)**.
10. From the evidence, there is no doubt Plot no. 136, Block III Sagnarigu Residential Area was allocated to the 1<sup>st</sup> defendant on 29<sup>th</sup> March, 2022, see Exhibit A. Exhibit B regarding the land was similarly issued on 29<sup>th</sup> March, 2022. This time on Exhibit B the witness of the grantor dated his signature as 4<sup>th</sup> July, 2022. Exhibits C and C1 depict the location or boundaries of the said land. Lastly, Exhibits D series show clearly the actions of the 2<sup>nd</sup> defendants' workmen on the disputed. Exhibits D2 and D3 show that there are foundation trenches on the said land. This clearly proves the acts of trespass of the 2<sup>nd</sup> defendant.
11. Now, trespass means, "a wrongful interference with the possession of property" or "entry to another's property without right or permission", see the *WordWeb Online Dictionary*. Hence, the continued presence of the other party without lawful right or permission amounts to trespass. See **Banini (An Infant) v Asare [1992] 1 GLR 353** where the court held that a person is entitled to use only such force as was reasonable

in the circumstance of keeping out or expelling a trespasser from his property. Also, trespass to land, as a tort, is actionable per se. This means that once the act of trespass has been proven against a defendant, the plaintiff does not have to prove by evidence that he has suffered damages. The law presumes injury to the plaintiff to be a natural consequence of the defendant's act of trespass and therefore a claim for general damages will arise as of right by inference of the law. See the cases of **Laryea v Oforiwaa [1984-1986] 2 GLR 410**, **Ayisi v Asibey III & Ors. [1964] GLR 695**, **Klah v Phoenix Insurance Limited [2012] 2 SCGLR 1139** and **Esi Yeboah v Mfantseman Municipal Assembly, Suit No. A2/6/2021 dated 13<sup>th</sup> October, 2022, HC**.

12. On the totality of the evidence, I find that the plaintiff has been able to prove his case on the balance of probabilities. As such, I hereby enter judgment in his favour.

## CONCLUSION

13. In sum, I hereby enter judgment in favour of the plaintiff as follows:

- "a. I declare that plaintiff is the owner of all that piece or parcel of land known as Plot No. 136 Block III Sagnarigu Residential Area in the Sagnarigu Municipal of the Northern Region of the Republic of Ghana bounded by plot nos. 137, 135 and the old Airport Road.
- b. I further set aside any purported sale or re-sale of Plot no. 136 Block III to the 2<sup>nd</sup> defendant by the 1<sup>st</sup> defendant.
- c. The defendants, their principals or agents, assigns, heirs and all those claiming through them are perpetually restrained from interfering with the quiet enjoyment of plaintiff's plot hereinabove described.
- d. Plaintiff is at liberty to recover possession.
- e. General damages for trespass assessed at GHS5,000.00.
- f. Costs also assessed at GHS10,000.00, i.e. GHS5,000.00 against each defendant.

**H/W D. ANNAN ESQ.**

**[MAGISTRATE]**

SAMPSON B. LAMBON ESQ., HOLDING THE BRIEF OF SYLVESTER ISANG ESQ. FOR  
THE PLAINTIFF

DEFENDANTS ABSENT

References:

1. ss. 11(4), 12(1) and (2) and 14 of Evidence Act, 1975 (NRCD 323).
2. *In re West Coast Dyeing Industry Limited: Adams v Tandoh* [1984-86] 2 GLR 561, CA
3. *Ankumah v. City Investment Co. Ltd.* [2007-2008] 1 SCGLR 1068
4. *Republic v. High Court (Fast Track Division); Ex-parte State Housing Co. Ltd. (No. 2) Koranten-Amoako Interested Party*, [2009] SCGLR 185
5. *Faibi v State Hotels Corporation* [1968] GLR 471
6. *In re Ashalley Botwe Lands; Adjetey Agbosu & Ors. v. Kotey & Ors.* [2003-2004] SCGLR 420
7. *Odametey v Clocuh* [1989-90] 1 GLR 14, SC
8. *Kodilinye v Odu* [1935] 2 WACA 336
9. *Banini (An Infant) v Asare* [1992] 1 GLR 353
10. *Laryea v Oforiwaa* [1984-1986] 2 GLR 410
11. *Ayisi v Asibey III & Ors.* [1964] GLR 695
12. *Klah v Phoenix Insurance Limited* [2012] 2 SCGLR 1139
13. *Esi Yeboah v Mfantseman Municipal Assembly, Suit No. A2/6/2021 dated 13<sup>th</sup> October, 2022, HC.*
14. *WordWeb Online Dictionary*

