

IN THE SUPERIOR COURT OF JUDICAURE IN THE HIGH COURT OF JUSTICE
LAND DIVISION HELD IN ACCRA ON FRIDAY THE 16TH DAY OF DECEMBER,
2022 BEFORE HIS LORDSHIP JUSTICE EMMANUEL AMO YARTEY.

SUIT NO. LD/0613/2021

SAMUEL TETTEY ORACCA TETTEH

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PLAINTIFF

V

EDWARD TORGBO SQUIRE & ANOR.

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DEFENDANT

PARTIES: JANE AMERLEY ORACCA REPRESENTS PLAINTIFF PRESENT

DEFENDANTS ABSENT

JUDGMENT

- 1.0 The brief facts of this case are that the Plaintiff is a Pensioner and the Head of Jane Amerley Laryea Family of Accra.
- 2.0 That the late Jane Amerley Laryea died possessed of various properties scattered across Accra
- 3.0 That one such property is a warehouse located in Accra and known as House Number D 328/1 Korlena Street, James Town and Accra which is more particularly described in the Schedule below.
- 4.0 That the Plaintiff has been administering this property by renting same to various tenants.
- 5.0 That the 1st Defendant holds himself as the head of Squire Family.

- 6.0 That the 2nd Defendant holds himself as the head of Torto Family.
- 7.0 That the Defendants have recently started various acts of trespass by interfering with the rights of the present tenants of the Plaintiff by locking the main entrance to the Warehouse with padlocks and chains.
- 8.0 That the Defendants have gone further by posting notices on various parts of the warehouse to the effect that the warehouse is the property of Torto and Squire Family.
- 9.0 That the 2nd Defendant invited the Plaintiff's family members to a meeting which was attended by persons purporting to represent the Squire Family
- 10.0 That at the meeting aforementioned the 2nd Defendant purported to be a neutral arbiter and collected photocopies of the Plaintiff's document in respect of the subject matter of this suit
- 11.0 That when the Plaintiff reported the conduct of the Defendants to the James Town Police, after further lock ups of the property in dispute, the Defendants produced the documents obtained from the Plaintiff by the 2nd Defendant as their documents of title.
- 12.0 That the Plaintiff is aggrieved by the wanton acts of trespass to the property in dispute and also the harassment to Plaintiff's tenants and prays for:
- (i) A declaration of title to all that piece or parcel of land with building thereon
- and known as House Number D 328/1 Korlena Street, Accra described in the schedule below.
- (ii) A declaration that the acts of the Defendants amount to trespass.

- (iii) Perpetual injunction restraining the Defendants, their agents and assigns from further interference with the right of the Plaintiff in the property in dispute.
- (iv) Damages against the Defendants in favour of the Plaintiff for trespass.

13.0 SCHEDULE

All that piece or parcel of land with the Buildings thereon situate lying and being at Afienah Accra bounded on the North by H. M. Squires property measuring seventy-four feet (74'-0") more or less on the South by Torto Brothers property measuring seventy-nine feet (79'-0") more or less on the East by a Lane measuring forty-seven feet Two inches (47'-2") more or less and on the West by properties of Mr. Crabbe and Madam Akua Abramah and measuring forty-two feet (42'-0") more or less which said piece or parcel of land with the buildings thereon is coloured RED in the PLAN attached hereto and marked "A".

14.0 On the service of the Writ of Summons and Statement of Claim on the Defendants they failed to enter an appearance for which reason the Plaintiff brought an Application on Notice for Judgment in Default of Appearance. There is evidence before me that notwithstanding the service of the Application on the Defendants they never contested same for which reason the Application was granted.

15.0 The Court thereafter ordered for a Hearing Notice and Plaintiff's Witness Statement to be served on the Defendants to enable the Plaintiff prove his case.

16.0 Notwithstanding service of the above processes on the Defendants they still refused to attend Court for which reason the Court proceeded with the trial.

17.0 The case of the Plaintiff was articulated by his only witness one Jane Amerley Oku. Per her Witness Statement she testified as follows:

“1. My name is Jane Amerley Oku.

2. I live at Laterbiokorshie, Accra.

3. I am self-employed.

4. I am a member of the Jane Amerley Laryea Family of Accra.

5. That the late Jane Amerley Laryea died possessed of various properties scattered across Accra.

6. That one such property is a warehouse located in Afienah, Accra and known as House Number D 328/1 Korlena Street, James Town, Accra as per **Exhibit A** attached.

7. That the Plaintiff and all his predecessors in title have been administering this property and exercised overt acts of ownership by renting same to various tenants as per **Exhibit B** attached.

8. That the plaintiff and all his predecessors in title have been paying **Property Rate** to the then Accra City Council, now Accra Metropolitan Assembly, from time immemorial as per **Exhibit C** attached.

9. House Number D 328/1 Korlena Street, James Town, Accra is sandwiched between H. M. Squire Family House and Torto Brothers Family House.

10. That the 1st Defendant holds himself as the head of a Squire Family.

11. That the 2nd defendant holds himself as the head of a Torto Family.

12. That the defendants have recently started various acts of trespass by interfering with the rights of the present tenants of the plaintiff by locking the main entrance to the Warehouse with padlocks and chains as per Exhibit D attached.

13. That the Defendants have gone further by posting notices on various parts

of the warehouse to the effect that the warehouse is the **PROPERTY OF TORTO AND SQUIRE FAMILY** as per **Exhibit E** attached.

14. That the 2nd Defendant invited the Plaintiff's family members to a meeting which was attended by persons purporting to represent the Squire Family

15. That at said meeting aforementioned the 2nd Defendant purported to be a neutral arbiter and collected photocopies of the Plaintiff's documents in respect of the subject matter of this suit.

16. That when the Plaintiff reported the conduct of the Defendants to the James Town Police, after further lock ups of the property in dispute, the Defendants produced the documents obtained from the Plaintiff by the 2nd Defendant as their documents of title.

17. That the Plaintiff is aggrieved by the wanton acts of trespass to the property in dispute and also the harassment to Plaintiff's tenants and prays this Honourable Court to grant him all the reliefs stated in the Writ of Summons."

18.0 The law is that notwithstanding the absence of the Defendants, the Plaintiff is still obliged to prove that he is still entitled to the reliefs he is seeking against the Defendants.

19.0 It is trite law that the present action being civil carries the same evidential burden as in any other civil matter.

20.0 The allocation of the burden of proof requires that some relevant portions of the Evidence Act, 1975 (NRCD 323) be reproduced.

21.0 In Section 11(1), it is provided as follows:

"For the purpose 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."

22.0 And Section 14 which is also relevant provides:

"Except as otherwise provided by law unless and until it is specified a party has the burden of persuasion as to each fact the existence or non-existence of which is essential to the claim or defence he is asserting."

23.0 These sections and others are the statement of the evidential rule that a party that wishes to win his case, or have an issue i.e. a claim or defence, ruled in his favour must lead sufficient evidence on the issue in order to be successful.

24.0 In this case where the Plaintiff is seeking declaration of title, inter alia, it is her duty to discharge the burden of proof satisfactorily.

25.0 Plaintiff carries the burden of proof on all the issues in the directions. Plaintiff must adduce 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. And the real standard required of him, is proof on the preponderance of the probabilities. Section 12 (2) and 14 of the Evidence Act referred.

26.0 Since the standard of proof in a civil action is proof on preponderance of probabilities, a Claimant need not prove his case with absolute certainty or with mathematical exactitude.

27.0 The standard of proof required in civil suits was explained in **Bisi v Tabiri & Anor (1987-88] 1GLR 386**, where the Court held as follows:

"The standard of proof required of a Plaintiff in a civil action was to lead such evidence as would tilt in his favour the balance of probabilities on the particular issue. The

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demand for strict proof of pleadings had however never been taken to call for an inflexible proof either beyond reasonable doubt or with mathematical exactitude or with such precision as would fit a jig-saw puzzle. Preponderance of evidence became the triers belief in the preponderance of probability. But probability denoted an element of doubt or uncertainty and recognized that where there were two choices it was sufficient if the choice recognized and selected was more probable than the choice rejected."

28.0 In **Hawkins v Powell Tillery Steam Coal Ltd (1911] 1 KB at 966** (cited in the Bisi case supra), Buckly LJ held as follows:

"When it is said that a person who comes to court for a relief must prove his case, it is never meant that he must prove it with absolute certainty. No fact can be proved in this world with absolute certainty. All that can be done is to adduce such evidence as that the mind of the tribunal is satisfied that the fact is so. This may be done either by direct evidence or by inference from facts. But the matter must not be left to rest in surmise, conjecture or guess".

29.0 Also in the case of **Zabrama v Segbedzi [1991] 2 GLR 223, CA**, the Court held:

"... The correct proposition is that, a person who makes an averment or assertion, which is denied by his opponent, has the burden to establish that his averment or assertion is true. And he does not discharge this burden unless he leads admissible and gentle evidence from which the fact or facts he asserts can properly and safely be inferred. The nature of each averment or assertion determines the degree and nature of that burden".

30.0 In **Odonkor & Anor v Amartei [1992-93] GBR 59, SC (holding 2)**, it was held:

"The principle that a Plaintiff in an action for declaration of title must win on the strength of his case and not on the weakness of the Defendant's case had been blunted and consigned between the covers of the Evidence decree where judges must be able to consider the relative merits of a civil case based on the preponderance of probabilities rather than on an archaic principle which might not accord with reason and common sense"

31.0 The requirement of proof as discussed supra therefore must be fulfilled in this action by the Plaintiff.

32.0 The question is was the Plaintiff able to discharge the burden of proof placed on him by law to warrant the granting of the reliefs he is seeking against the Defendants.

33.0 A perusal of Exhibits A, B and C confirms Plaintiff's ownership of the subject land. In the circumstance I accordingly enter judgment for Plaintiff as follows:

34.0 I. I decree title to all that piece or parcel of land with the building thereon and known as House number 328/1, Korlena Street, Accra.

35.0 11. I further declare that the acts of the Defendants amount to trespass.

36.0 III I grant Plaintiff perpetual injunction restraining the Defendants, their agents and assigns from further interference with the rights of the Plaintiff in property in dispute.

37.0 IV I award Plaintiff GH¢30,000 as general damages.

38.0 V Cost of GH¢10,000 against Defendants.

(SGD)

EMMANUEL AMO YARTEY (J)

COUNSEL: STANLEY BOYE-QUAYE FOR PLAINTIFF

