

The Plaintiff on the 27th day of January, 2014 caused a Writ of Summons to be issued against the Defendants herein and claimed jointly and severally against them for the following reliefs:

a. Declaration on title to all that piece or parcel of land situated, lying and being at Mpota in the Gomoa East District in the Central Region of the Republic of Ghana the boundaries whereof commencing from survey pillar No. SGC/A195/08/02 for a distance of 8075.94' feet on a bearing of 236.6'19 which bearing together with all further bearing hereinafter mentioned is referred to the Meridian 1° Longitude of pillar marked SGC/F102/12/1, thence bearing 215o.26'16 for a distance of 308.30' feet to pillar marked SGC/F102/12/2, thence on bearing 313o.10'16 for a distance of 298.78' feet to pillar marked SGC/F103/3, thence on bearing of 33°.56'31 for a distance of 299.08' feet pillar marked SGC/F102/12/4, thence on a bearing of distance of 305.44' feet to pillar marked SGC/kce2/01/2, thence on a bearing of 55°.27'1' for a distance of 78394.08' feet the point of commence and thereby enclosing an approximate area of 2.088 acres.

b. Recovery of possession.

c. An order for perpetual injunction restraining the Defendants, his family, workmen, agents, purported lessees, assigns, personal representatives, descendants etc. and anyone claiming through or under Defendants from interfering with the peaceful enjoyment of the disputed land by the Plaintiff.

d. General Damages for trespass.

e. Order for removal of the fence wall at the cost of the Defendant.

f. cost including lawyers cost incidental to the suit.

BRIEF FACTS OF THE CASE

It is the case of the Plaintiff that he is the director of Jamca mining and trading enterprise and lives at Dunkwa-on-Offin.

The Plaintiff contends that by an indenture dated the 15th day of June 2012 he acquired a land, the disputed land herein from the Tekyina Abradzie family of Gomoa Mpota represented by the Head of Family Ebusuapanyin Kofi Essuman. The Plaintiff avers that a search conducted on the land indicated that the land is a family land and was granted to Jamca Mining & Trading Enterprise by Ebusuapanyin Kofi Essuman.

The Plaintiff avers that the land was paid for, documents were executed and the transaction concluded and he described the land thus:

All that piece or parcel of land situated , lying and being at Mpota in the Gomoa East District in the Central Region of the Republic of Ghana boundaries whereof commencing from survey pillar No.SGC/A195/08/02 for a distance of 8075.94' feet on a bearing of 236.6' 19 which bearing together with all further bearing hereinafter mentioned is referred to the Meridian 1° longitude of pillar marked SGC/f102/12/2, thence bearing of 215o .26'16 for a distance of 308.30' feet to pillar marked SGC/f102/12/2,thence bearing 313o.10'16 for a distance of 298.78' feet to pillar marked SGC/F102/12,3, thence bearing of 33°.56'31 for a distance of 299.08' feet to pillar marked SGC/F102/12/4, thence on a bearing of 131°. 14'24' for a distance of m 305.44' feet to pillar marked SGC/KCE2/01/2,thence on a bearing of 55°.27'1' for a distance of 78394.08' feet the point of commence and thereby enclosing an approximate area of 2,088 acres.

According to the Plaintiff, he went into immediate possession and constructed a room on the land for storage and security personnel. The Plaintiff avers that the transaction was covered by documents and same registered at the Lands Commission, Cape Coast.

According to the Plaintiff on the 24th day of October 2013 his workmen were on the land to complete the single room and met the workmen of the Defendants digging trenches on a portion of the Land. The Plaintiff avers that his agent left his telephone number to the Defendants' workmen and 1st Defendant called him describing himself as Nana Appiah Badu VI, chief of Mpota.

The Plaintiff avers that all attempts to stop the Defendants from their trespassory activities has failed and they have constructed a fence wall covering about two-thirds of Plaintiffs land.

The Plaintiff further avers that unless Defendants are restrained from their act of trespass, they will continue to interfere with the peaceful possession, occupation and enjoying of the disputed land by the plaintiff.

In their amended of Statement Defence and Counter – Claim, the Defendants aver that the 1st Defendant is the substantive chief of Gomoa Mpota and hails from Tekyina Aboradze family but lives at Kasoa. **Whilst** the 2nd Defendant has been the family secretary of the said Tekyina Aboradze family since 1975 and lives at Winneba but do not know 3rd Defendant.

The Defendants aver that in so far as the Plaintiff claims to have acquired he said parcel of land from the Tekyina Aboradze family through Ebusuapanyin Kofi Essuman same is null and void *ab initio* since the said Kofi Essuman is not the head of family who has any right to dispose of family land.

The Defendants aver that save that the search report might be correct in so far as the land is in the name of the Tekyina Aboradze family, the rest of the averments are false since the said person is not so authorized to deal in the family's land. The Defendants further aver that the family is not aware of any such demise in the Plaintiff's favour as the said parcel of land has already been demised to the 1st Defendants for a gas filling station for which he has performed the necessary customary rites to the family as required.

The Defendants further denied Paragraph 6 of the Plaintiff's statement of claim in so far as the said payments were made to the said Ebusuapanyin Kofi Essuman who they aver is not the head of the family but rather Ebusuapanyin Kwesi Gurah who was duly installed as the head of the family on 13th March, 2010.

According to the Defendants, the said parcel of land has already been demarcated to the 1st Defendant who has already fenced the entire land when he noticed the activities of the workers of the Plaintiff. He reported to the police and several invitations to the Plaintiff could not materialize as he has failed to turn up.

The Defendants aver further that during the installation of Ebusuapanyin Kwesi Gurah as the head of the family in March, 2010, the said Kofi Essuman caused commotion resulting in the arrest of six persons including himself.

According to the Defendants any dealings with the said Kofi Essuman is fraudulent as he is not the head of family entitled to dispose of family land; more so when the same parcel of land has already been granted to the 1st Defendant and the Plaintiff was fully aware of this fact.

The Defendants denied the Plaintiff's claim and counter – claimed for the following:

1. A declaration of a title in all that land as belonging to the Takyina Aboradze family as described in the schedule to the Plaintiff's statement claim.
2. A declaration that Ebusuapanyin Kofi Essuman is not the head of family and is not entitled to dispose of family land.
3. A declaration that Ebusuapanyin Kwesi Gurah is the head of family.
4. A declaration of title in respect of the land in dispute favour of the 1st Defendant.
5. An order for recovery of vacant possession of the land in dispute.
6. Damages for trespass.
7. Costs.

In further denial of the Defendants averments, the Plaintiff in his reply to the Defendants Statement of Defence and Counter – Claim stated that paragraphs 5, 11, 18, 19, 20 and 25(b) and (c) of the 1st and 2nd Defendants statements of defence are cause or matter affecting chieftaincy and same must be struck out as may embarrass the trial.

Preliminary Issue

I will quickly dispose of the preliminary issue raised and argued on behalf of the Plaintiff to strike out paragraphs 5, 11, 18, 19, 20 and 25(b) and (c) of the 1st and 2nd Defendants Statement and Counterclaim because these are cause or matter affecting chieftaincy and same must be struck out as may embarrass the trial.

The Supreme Court gave an overview of what really constitutes a matter or cause affecting Chieftaincy in the case of **IN RE OGUAA PARAMOUNT STOOL; GARBRAH VRS. CENTRAL REGIONAL HOUSE OF CHIEFS & HEIZEL [2005-2006] SCGLR 193** where the Supreme Court speaking through Prof Ocran JSC at 214 of the report stated thus:

“It appears from the language of the Chieftaincy Act, 1971 that the litmus test for determining whether an issue is a cause or matter affecting chieftaincy is the existence of a ‘question’ or ‘dispute’, or contested matter, or a cause in the sense of a justiciable controversy, with respect to any of the matters listed therein, and not literally in respect of every matter bearing on chieftaincy. The instant complaint does not constitute a cause or matter or matter affecting chieftaincy within the meaning of section 66 of Act 370 because it does not raise an actual challenge to the nomination, election, appointment and installation of a person as a chief, or his/her destoolment or the right of participation in such decision-making or ceremony.”

Again in the case of **Republic v High Court, Koforidua; Ex parte Bediako II [1998-99] SCGLR 91 at 102** the Supreme Court, per Sophia Akuffo JSC, also stated thus:

“to my mind, the mere fact that the question of whether or not a person is a chief rears its head during an application for certiorari before the High Court does not necessarily constitute the matter as one affecting chieftaincy for the purpose of section 57 of the Courts Act, 1971, where such a question arises as a matter secondary to the determination of the fundamental question whether or not an inferior body had the jurisdiction to do something, and does not give rise to the necessity to make a final determination of such status and whether and or not such a person has been properly nominated, elected and installed to

the applicable custom or usage. In order to constitute a matter as one affecting chieftaincy, it must, in my view, be the determination of the which, unless over overturned on appeal, would settle once and for all, a chieftaincy matter or dispute.”

In the instant case, there is no issue affecting cause or matter affecting chieftaincy among the matters or issues for determination in this suit. Therefore the mere mention of chiefs and destoolment is not enough to constitute a matter affecting chieftaincy.

I will therefore decline the invitation to strike out the pleadings cited and same is refused.

THE ISSUES FOR TRIAL

The issues set down for trial pursuant to Order 32 rule 7A of C.I 47 were:

- 1. Whether or not Plaintiff is entitled to his claim*
- 2. Whether or not the Tekyina Aboradze family of Gomoa Mpota represented by Ebusuapanyin Kofi Essuman as the head of family at the material time particular was the owner of the disputed land.*
- 3. Whether or not Plaintiff acquired the land regularly from the said family.*
- 4. Whether or not 1st Defendant is the owner or can pass good title of the land in dispute to a third party.*
- 5. Whether or not between the Plaintiff and the 1st Defendant, the Plaintiff has a better title to the land in dispute.*
- 6. Whether or not Defendants are entitled to their counter-claim.*

THE BURDEN OF PROOF IN A CIVIL ACTION

Section 14 of the Evidence Act 1975 NRCD 323 which provides;

“Except as otherwise provided by law, unless and until it is shifted, 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”.

Sections 10, 11, 12, and 14 of the Evidence Act 1975, sets out the standard of proof in any civil discourse. Section 10 (1) and (2) of the EVIDENCE ACT, 1975¹ defines the burden of persuasion thus:

(1) For the purposes of this Decree, the burden of persuasion means the obligation of a party to establish a requisite degree of belief concerning a fact in the mind of the tribunal of fact or the court.

(2) The burden of persuasion may require a party to raise a reasonable doubt concerning the existence or non-existence of a fact or that he establish the existence or non-existence of a fact by a preponderance of the probabilities or by proof beyond a reasonable doubt.

SEE: BAKERS – WOODE VRS. NANA FITZ [2007 – 2008] 2 SCGLR 879

Also, Section 11(1)(4) of NRCD 323 deals with the burden of producing evidence and defines same thus:

¹ (NRCD 323)

(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.

(2) 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.

SEE: FOSUA & ADU – POKU VRS. DUFIE (DECEASED) & ADU POKU – MENSAH [2009] SCGLR 310 @ 325 - 327

Again, Section 12(1)(2) NRCD 323 provides for the Proof by a Preponderance of the Probabilities thus,

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

(2) "Preponderance of the probabilities" means that 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.

SEE: SARKODIE VRS. FKA COMPANY LTD [2009] SCGLR 65, ZABRAMA VRS. SEGBEDZI² AND MAJOLAGBE VRS. LARBI AND ORS³.

The Plaintiff has a duty to establish his case by leading evidence sufficient enough to meet the legal standard set by law in civil discourse.

² [1991] 2 GLR 223

³ [1959] GLR 190 – 195

From the pleadings of the parties in this suit, the onus of proof is on both the Plaintiff and Defendants, as the Defendants have counter claimed against the Plaintiff. The Supreme Court in the case of GBEDEMAH VRS. AWOONOR WILLIAMS (1970) CC 12 explained the nature of Counter claim when it stated that counter claim is to all intents and purposes an action by the Respondent against the Applicant it is an independent and separate action. The court relied on the case of WINTERFORD VRS. BRADNUM 3 QBD 324 in which **Brett L.J** said at page 326 of the report as follows:

“ Counter-claim is sometimes a mere set off, sometimes it is in a nature of cross action, sometimes it is in respect of a wholly independent transaction”

In the case of BANK OF WEST AFRICA LTD. VRS. ACKUN (1963) 1 GLR 176 the Supreme Court further explained that, the onus of proof in civil cases depends upon the pleadings and that a party who in his pleadings raises an issue essential to the success of his case assumes the burden of proof. The above case has clearly buttressed the position of the law in ZABRAMA VRS. SEGBEDZI (SUPRA).

SEE: ALSO: OKONTI BORLEY & Another VRS. HAUSBAUER LTD [2021] 17G.M.J.321 S.C

THE EVIDENCE, ANALYSIS AND THE APPLICABLE LAW

I will first of all deal with issues 1, 2, and 3 together and proceed to deal with issues 4, 5, and 6 also together.

In his evidence, the Plaintiff said in 2012 he approached Nana Appiah Badu VI the then Chief of Gomoa Mpota for land and as a result the chief showed him the land and gave him a site plan to conduct a search. According to the Plaintiff the search revealed that

the land was a family land belonging to the Tekyina Abradze family of Gomoa Mpota. The then chief then referred him to Ebusuapanyin Kofi Essuman for the acquisition of the said land. The Plaintiff then paid for the land per Exhibit A and was also give an indenture to cover the land per Exhibit B and thereafter registered the land at the Lands Commission Cape Coast. The Plaintiff further stated in his evidence that he took possession of the land and put up a single room on the disputed land. This piece of evidence relating the building of the single room was admitted by the Defendants. The evidence of the Plaintiff was also largely corroborated by PW1 the then Chief of Mpota and PW2 who also substituted Ebusuapanyin Kofi Essuman to testify. The Defendants denied the said Kofi Essuman as Ebusuapanyin but same was rejected by the plaintiff, PW1 and PW2.

John Kofi Sackey PW2 who substituted Ebusuapanyin Kofi Essuman gave a vivid account as to how Kobina Ketsiaba then Ebusuapanyin of the family met all the family members during which Ebusuapanyin Kofi Essuman was vividly appointed as Ebusuapanyin.

In his evidence, the 1st Defendant said he is the current chief of Mpota by name Nana Appiah Badu VII and a shareholder in Gearvos investment Limited. According to the 1st Defendant, the 3rd Defendant is his business partner.

The fact that the land in dispute belongs to the Royal Tekyina Aboradze family is not in dispute. It is the evidence of the 1st Defendant that he and his company bought the land in dispute from Ebusuapanyin Kwesi Gurah in 2013. According to the 1st Defendant, two years after buying the land they started operating until the Plaintiff issued a writ against them.

In his evidence the 2nd Defendant stated that Kofi Essuman who sold the land to the Plaintiff was not Ebusuapanyin. The 2nd Defendant said even during the installation of Ebusuapanyin Kwesi Gurah as Ebusuapanyin the said Kofi Essuman and six others misbehaved at the function and were arrested and put before the District Court Winneba.

The 3rd Defendant also gave evidence and corroborated the evidence of the 1st Defendant and added that they constructed a fence wall and a foundation on the land when the plaintiff issued a writ of summons against them for trespassing unto his land. The 3rd Defendant gave his correct name as Raphael Bondzie Quaye and not Kofi Shell so same is accordingly corrected or amended. Also the 3rd Defendant in his supplementary witness statement tendered in evidence as KS1 being the Court of Appeal decision that the destoolment of Nana Appiah Badu II was proper.

A party claiming title to land must disclose his root of title , incidence of purchase if acquired by sale or traditional acquisition if inherited and acts of unchallenged possession. See: **NANA AMUAH GYEBI XV VRS. MONDIAL VENEER LTD [2011] 32 MLRG 84 SC**

It is trite that for an action for declaration of land, the burden of proof remains on the Plaintiff to establish his case by the balance of the probabilities which includes the boundaries of his land and its identity, especially where trespass is in issue though not to the point of certainty.

SEE:

1. **JASS CO. LTD & ANOR VRS. APPAU & ANOR [2009] SCGLR 265 AND 272 – 273**

In the instant case before this court, there is evidence on record to show that the Plaintiff prior to acquiring the land conducted a search being prudent purchaser and it revealed that the land in dispute belongs to the Royal Tekyina Aboradze family and proceeded to acquire the land from the family. See **Section 2 Conveyancing Act 1973 (NRCD 175), BROWN VRS. QUASHIGAH 2003 – 2004 SCGLR 930.**

See also: **BOATENG VRS. DWINFOUR [1979] GLR 360 @ 366-337**

It is not in doubt that Ebusuapanyin Kofi Essuman and Nana Appiah Badu VI are principal members of the Royal Tekyina Aboradze family. I find that there were undercurrents and pockets of conflicts within the family with some rooting for Ebusuapanyin Kofi Essuman and Ebusuapanyin Kwesi Gurah. This is because if there were disturbances during the purported ‘installation’ of Ebusuapanyin Kwesi Gurah, and Ebusuapanyin Kofi Essuman was involved, then his role as head of the family felt threatened.

I further find that at the time Nana Appiah Badu VI was the Chief at Mpota and a member of the Royal Tekyina Aboradze family of Mpota, the then Ebusuapanyin was Ebusuapanyin Kofi Essuman and not Kwesi Gurah. I further hold that at the time the Plaintiff bought the land from the family, the head of family was Ebusuapayin Kofi Essuman.

What the Defendants sought to do was to mix pure issue of head of family with issues of chieftaincy as to who is the proper chief or otherwise but this court will resist any attempt to draw the court to that forum for want of jurisdiction.

I also find that the Plaintiff rightly described his land evidenced by the indenture issued by the family. I further hold and as argued on behalf of the Plaintiff that Nana Appiah

Badu VI can witness a land transaction both in his capacity as a principal member of the family or as a chief. What he cannot do solely as a chief is to alienate a stool land without the consent and concurrence of his principal elders. See: FIANKO VRS. AGGREY {2007 2008} SCGLR 1135.

I will now proceed to deal with issues 4, 5 and 6 and revert to pronounce on all the issues set for the trial of this matter. In the case of ARYEH & AKAKPO VRS. AYAA IDDRISSU [2010] SCGLR 891 – 901, the Supreme Court speaking through Brobbey JSC on counterclaim at page 901 of the report stated:

“A party who counter – claim bears the burden of proving his counterclaim on the balance of the preponderance of the probabilities and will not win on the issue only because the original failed. The party wins on the counterclaim on the strength of his own case and not on the weakness of his opponent’s case.”

In the instant case before this court, the 1st Defendant and the 3rd Defendant who claimed to have purchased the land in dispute failed to produce any document by way of an indenture or lease agreement evidencing the purchase of the land from the Royal Tekyina Aboradze family of Mpotia. Indeed it is not enough to be a chief to acquire a family land for yourself and business partner without the appropriate documentation as that can breed chaos especially when the extent of the land has not been determined and in line with **Section 2 Conveyancing Act 1973 (NRCD 175)**. See: BROWN VRS. QUASHIGAH (SUPRA).

Furthermore, the land in dispute was properly alienated to the Plaintiff by the family represented by the then head of family Ebusuapanyin Kofi Essuman in concert with the principal members of the Royal Tekyina Aboradze of Mpotia. Any attempt to do the contrary is an afterthought

*calculated to frustrate the Plaintiff's interest in the property. The Plaintiff cannot be made to suffer for the family related conflicts as the family is bound by the lease agreement already entered with others including the Plaintiff even if their heads have suffered removal or otherwise. This principle is explicit in **nemo dat quod non habet principle** as the family cannot give what it does not have and same cannot avail the Defendants particularly the 1st Defendant and the 3rd Defendant. See: AMEFINU VRS. ODAMETEV AND OTHER [1977] 2 GLR 135-145*

From the forgoing, the Plaintiff succeeds on all the issues as the Defendants fails including their counter – claim. The COUNTER – CLAIM of the Defendants is therefore dismissed.

Accordingly, Judgment is entered in favour of the Plaintiff against the Defendants for the following reliefs:

a. Declaration to title to all that piece of land situate, lying and being at Mpota in the Gomoa East District in the Central Region of the Republic of Ghana the boundaries wherefore commencing from survey pillar No. SGC/A195/08/02 for distance of 8075.54 feet on bearing together with all further bearing hereinafter mentioned the meridian 1⁰ Longitude of pillar marked SGC/F/102/12/1, thence on a bearing of 215.26' 16 for a distance of 308.30' feet to pillar marked SGC/F 102/12/3, thence on a bearing of 33⁰,56'3' for a distance of 299.08' feet to pillar marked SGC/F 102/12/4, thence on a bearing of 131⁰.14'24' for a distance of 305. 44' feet together marked SGC/1/CT 2/01/2, on a bearing of 55⁰.27'1' for a distance of 78394' feet the point of commencement and thereby enclosing an approximate area of 2.088 acres.

b. Recovery of possession.

c. An order of perpetual injunction restricting the Defendants, family, workmen, agents purported lessee, assigns, personal representatives, descendants and any one claiming through or under the Defendants from interfering with the peaceful enjoyment of the disputed land by the Plaintiff.

d. General damages for trespass assessed at Twenty Thousand Ghana Cedis (GH¢20,000.00).

e. An order for removing fence wall at the cost of the Defendants subject to relief 'b' if the Defendants fail so to do.

f. Cost of Thirty Thousand Ghana Cedis (GH¢30,000.00) is awarded against the Defendants in favour of the Plaintiff.

(SGD)

JUSTICE ABOAGYE TANDOH

HIGH COURT JUDGE.

COUNSEL

MR. VICTOR YANKSON ESQ. WITH KOBBY NDOM ESQ., FOR THE PLAINTIFF.

MR. CAB-ADDAE ESQ., FOR THE DEFENDANTS ABSENT.

/MK/

