

IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT OF JUSTICE
WINNEBA, HELD ON WEDNESDAY THE 29TH DAY OF NOVEMBER, 2022,
BEFORE HIS LORDSHIP, JUSTICE ABOAGYE TANDOH, HIGH COURT JUDGE.

SUIT NO. E1/061/20

DATE: 29TH NOVEMBER, 2022.

MRS DINAH QUANSAH

... PLAINTIFF

DOING BUSINESS UNDER THE NAME

AND STYLE OF DEMASCO COLD STRE

H/NO A V6, COMMUNITY 5

TEMA

VS

NANA ADAWU DARKO II

KASOA.

..... DEFENDANT

JUDGMENT

The Plaintiff caused a writ of summons to be issued on the 30th day of December, 2019 against the Defendant and claimed for the following reliefs:

- a. A declaration of title to all that piece or parcel of land lying and situated at Oduponkpehe – Kasoa in the Effutu-Awutu Senya District in the Central Region of the Republic of Ghana the boundary whereof commencing at a pillar marked P. 1 is 75.9 feet on a bearing of 12°00' from survey pillar No. SGC. KL/70 which

bearing together with all further bearings hereinafter mentioned is referred to the meridian 1° West Longitude thence from P. 1 runs on a bearing of 349°00' for 200.5 feet to P.2 thence run on a bearing of 82°30' for 70.0 feet to P.3 thence runs on a bearing of 82°30' for 70.0 feet to P.3 thence runs on a bearing of 164°00' for 202.5 feet to P.4 thence runs on a bearing of 262° 30' for 70.0 feet to P. 1 the point of commencement thus enclosing an approximate area of 0.33 or an Acre.

- b. Special damages.
- c. Damages for trespass.
- d. General damages.
- e. An order of Perpetual injunction to restrain the Defendant, his agents, theirs and assigns from entering the land, continuing construction, or in any way interfering with the land pending hearing and determination of this matter.
- f. Recovery of possession of the land.

BRIEF FACTS OF THE CASE

The Plaintiff avers that it acquired a piece of land from Anona Family acting by Nai Odupon Awushie Tetteh II Tsatsu Teye, head of the family and chief of Odupong Ofankor acting with the concurrence of the Principal members of the family. The Plaintiff says that the acquisition is evidenced by a deed of conveyance dated 12th December, 1997 and registered in the Lands Registry as No. CRD 538 with serial number 467/06 and plotted as CR 1334/98.

The Plaintiff avers that the land which is at Oduponkpehe, Kasoa in the Central Region measures about 0.33 acre and is described as follows:

All that piece or parcel of land lying and situated at Oduponkpehe – Kasoa in the Effutu-Awutu Senya District in the Central Region of the Republic of Ghana the boundary whereof commencing at a pillar marked P. 1 is 75.9 feet on a bearing of 12°00' from survey pillar No. SGC. KL/70 which bearing together with all further

bearings hereinafter mentioned is referred to the meridian 1⁰ West Longitude thence from P. 1 runs on a bearing of 349⁰⁰' for 200.5 feet to P.2 thence run on a bearing of 82⁰³⁰' for 70.0 feet to P.3 thence runs on a bearing of 82⁰³⁰' for 70.0 feet to P.3 thence runs on a bearing of 164⁰⁰⁰ for 202.5 feet to P.4 thence runs on a bearing of 262^{0 30}' for 70.0 feet to P. 1 the point of commencement thus enclosing an approximate area of 0.33 or an Acre.

The Plaintiff avers that it fenced the land and was constructing a 4 bedroom house on it. The Plaintiff says the 4 bedroom house was at an advanced stage of construction and roofed in certain portions. The Plaintiff says that it has been in possession of the land without disturbances until recently when the Defendant forcibly entered the land, tore down the 4 bedroom house and began the construction of a building at breakneck speed, day and night on the land.

The Plaintiff contends that she has suffered loss and damage as result of the building being torn down:

PARTICULARS OF SPECIAL DAMAGES

1. Cost of the building torn down.

The Plaintiff says that it caused a writ to be issued against a person it believed to be the trespasser whereupon the Defendant approached plaintiff to say he is the person constructing the building, acknowledge his trespass and promised to compensate plaintiff, or vacate the land. The Plaintiff avers that despite the numerous promises by the Defendant, he has failed to reach agreement with the Defendant and is clandestinely continuing with the construction of the building.

The Plaintiff avers that Defendant will not stop his trespass unless prevented from doing so by the Honorable Court.

The two main issues for determination in this matter are:

- 1. Whether or not the Plaintiff is the Owner of the land in dispute as described by the Plaintiff*
- 2. Whether or not the Defendant trespassed unto the Plaintiff's land.*

Even though all the court processes were served on the Defendant, he failed to respond to same.

On the 14th day of July 2021 all the parties were ordered to file their respective witness statements and on the 23rd day of June 2022 Case Management Conference was held and adjourned to 19th July 2022 for hearing and the Defendant was duly notified but he failed to appear in court for the Case Management Conference neither did he avail himself for the hearing or trial.

THE BURDEN OF PROOF IN A CIVIL ACTION

The general position at law in the determination of issues by the court is that; to enable the court decide a case one way or the other, each party to the suit must adduce evidence on the issues to be determined by the court to the standard prescribed by law.

This position is buttressed by section **14 of the Evidence Act 1975 NRCD 323** which provides that;

“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.*

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

- (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.*

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

¹(NRCD 323)

(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 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.

In the case of MOJOLAGBE VRS. LARBI⁴ the Court in its bid to provide the accepted guideline in evaluating the worth of adduced evidence 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 or circumstances; and where his averment is denied, he does not prove it by merely going into the witness box and repeating the averment on oath and having it repeated on oath by his 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".

THE EVIDENCE, ANALYSIS AND THE APPLICABLE LAW

As indicated earlier that the Defendant failed to participate in the trial despite numerous hearing notices to that effect, that in itself does not entitle the Plaintiff to her

²[1991] 2 GLR 223

³[1959] GLR 190 – 195

⁴(1959) GLR 190 at 192

reliefs. The Plaintiff still has the burden to lead evidence on the balance of probabilities to establish her claim. And once that has been so established, a party who failed to appear in court having been so notified cannot turn round and accuse the adjudicator of breach of natural justice as cited by the Counsel for the Plaintiff. See the case of **Ex-Parte State Housing Company Ltd [NO 2] 2009 SC GLR 185**

Also in the case of **ODAMETAY v. CLOCUH AND ANOTHER [1989-90] 1 GLR 14-45** also quoted by learned counsel for the defendant, the **SUPREME COURT, per ADADE, TAYLOR, FRANCOIS, WUAKU AND AMUA-SAKYI JJ.S.C.** in holding (1) Held:“(1) the present position was that if the plaintiff in a civil suit failed to discharge the onus on him and thus completely failed to make a case for the claim for which he sought relief, then he could not rely on the weakness in the defendant's case to ask for relief. If, however, he made a case which would entitle him to relief if the defendant offered no evidence, then if the case offered by the defendant when he did give evidence disclosed any weakness which tended to support the plaintiff's claim, then in such a situation the plaintiff was entitled to rely on the weakness of the defendant's case to strengthen his case. That was amply supported by sections 11 and 12, particularly section 11 (4) of the Evidence Decree, 1975 (N.R.C.D. 323)”

In her quest to establish her claim, and in her evidence before this court, the Plaintiff Mrs Dinah Quansah told the court in her evidence that she operates a business called Demasco Cold Store in Tema Community 5. According to the Plaintiff she generally deals in fish and at a point in time she was operating trawlers as well as cold stores.

According the Plaintiff, she decided to set up a cold store in Kasoa which was then a fast growing area. The Plaintiff said in 1997 she identified an ideal location for the cold store in Kasoa and she was told it belongs to the Anona Royal Family, so she approached the Royal family and negotiated and bought the land from the family. At

the time, the Plaintiff said Nai Odupong Awushie Tetteh II was the Chief of Odupong Ofaakor – Kasoa and the head of the family who granted her a lease which he signed, and which was witnessed by the elders of the stool and principal members of the family.

The Plaintiff further stated that she subsequently registered the lease at the Lands Commission. The Plaintiff said, the lease is dated 12th December, 1997 and registered in the Lands Registry as No. CDR 538 with serial number 467/06 and plotted as CR 1334/98 and tendered same in evidence as **Exhibit 'A'**.

The Plaintiff then described her land as follows:

All that piece or parcel of land lying and situated at Oduponkpehe – Kasoa in the Effutu – Awutu Senya District in the Central Region of the Republic of Ghana the boundary whereof commencing at a pillar marked P.1 is 75.9 feet on a bearing of 12° 00' from survey Pillar No. SGC.KL/70 which bearing together with all further bearings hereinafter mentioned is referred to the Meridian 1° West Longitude thence from P.1 runs on a bearing of 349° 00' for 200.5 feet to P.2 thence runs on a bearing of 82° 30' for 70.0 feet to P.3 thence runs on a bearing of 164° 00' for 202.5 feet to P.4 thence runs on a bearing of 262° 30' for 70.0 to P.1 the point of commencement thus enclosing an approximate area of 0.33 of an Acre.

The Plaintiff said she fenced the land and was constructing a building on it to be used as a cold store, offices and residence so she built the land to an advanced stage and roofed certain portions.

According to the Plaintiff, in the year 2015 she discovered that someone had gone to the land, taken over her building, demolished the building and began the construction of a building at breakneck speed, day and night on the land. The Plaintiff said she was first

informed that one Mr Kobain was responsible for breaking her building so she caused a writ to be issued against him per **Exhibit 'B'** but Defendant came out to admit responsibility for the demolition of her building.

According to the Plaintiff, the Defendant promised to compensate her and find an alternate land for her but after several meetings with the Defendant and her Lawyer, he failed to compensate her, but he continued to build on the land clandestinely.

The Plaintiff said she had the land and building thereon valued and tendered same as **Exhibit 'C'**. The Plaintiff stated that the value of the building at the time of demolition was about Six Hundred Thousand Ghana Cedis (GH¢600,000.00) per **Exhibit 'C'**.

In the case of **BARIMA GYAMFI AND ANOTHER VRS. AMA BADU**⁵ the Supreme per Sakodee- Addo, Ollennu and Blay JJ.S.C stated among others that:

“In a civil case, the decision must be upon the balance of probabilities established by preponderance of the evidence. Where the preponderance of the evidence is in favour of the plaintiff, a judge is fully justified in granting the plaintiff’s relief sought”.

In the instant case before this court, and per the evidence adduced, I have no doubt in my mind that the Plaintiff is the owner of the land in dispute which I find as a fact and hold same.

I will now proceed to determine the issue of whether or not the Defendant trespassed on the Plaintiff’s land.

In order to demonstrate the Defendant’s act of trespass on her land, the Plaintiff tendered in evidence Exhibit C which was clearly occasioned by the trespassory conduct of the Defendant on the Plaintiff’s land.

⁵(1963) 2GLR at 597

In the case of YORMENU VRS. AWUTE & ORS⁶ the court held:

“The Plaintiff’s claim was founded in trespass which was in law a violation of his possessory rights. And since he had admitted that the defendants had land adjoining to his, in order to succeed it was necessary to have described the trespassed area in his possession with clarity”

From the foregoing and from the evidence on record, the Defendant without authorization trespassed unto the Plaintiff’s land which was clearly described per **Exhibit B**, which I find as a fact and hold same.

I have considered the totality of the evidence adduced before this court, the authorities so cited and the law on the balance of the probabilities that the Plaintiff led sufficient evidence to establish all her claims.

Accordingly, Judgment is entered in favour of the Plaintiff against the Defendant for the follow reliefs:

a. Declaration of title to will that piece or parcel of land lying and situate at Odupongkpehe, Kasoa in the Effutu-Awutu Senya District in the Central Region of the Republic of the Ghana. The boundary thereof commencing at a pillar mapP1’ is 75.9 feet on a bearing of 12⁰. 00’ from survey pillar No. SGC, 111/70 which bearing together with will further bearings hereinafter mentioned 1⁰ West Longitude thence from P1’ on a bearing of 349⁰.00’ for 200.5 feet thence runs on a bearing of 82⁰.30’ for 70.0 feet to P3 thence runs on bearing of 184⁰.00’ feet to P4. Thence runs on a bearing of 262⁰. 30’ for 70.0 feet to P.2 the point of commencement, thus encroaching on an approximate area of 0.33 of an area.

⁶[1987-88] 1 GLR 9 CA holding 2

- b. Special Damages assessed at Six Hundred Thousand Ghana Cedis (GH¢600,000.00) subject to interest rate at the prevailing Bank of Ghana rate from date of Judgment until final payment.
- c. Damages for trespass and general damages assessed at Fifteen Thousand Ghana Cedis (GH¢15,000.00) for reliefs c and d.
- e. Cost of Twenty-One Thousand Ghana Cedis (GH¢21,000.00).
- f. An order of perpetual injunction to restrict the Defendant, his agents, heirs and assigns from entering the land, continuing construction or in any way interfere with the land.
- g. Recovery of possession of the land in issue.

(SGD)

**H/L JUSTICE ABOAGYE TANDOH
HIGH COURT, WINNEBA**

COUNSEL

MR. J. OPOKU AGYEI ESQ., FOR THE PLAINTIFF PRESENT.

/MK/

