

IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT OF JUSTICE
WINNEBA, HELD ON WEDNESDAY THE 30TH DAY OF NOVEMBER, 2022,
BEFORE HIS LORDSHIP, JUSTICE ABOAGYE TANDOH, HIGH COURT JUDGE.

SUIT NO. E1/029/18

DATE: 30TH NOVEMBER, 2022.

PRINCE KWAME BOATENG ... **PLAINTIFF**
H/NO. 7, FLOWER STREET TABORA
ACCRA.

VS

1. 21ST CENTURY CONSTRUCTION CO. LTD
H/NO. C76/16 NSAWAM ROAD, ACCRA & ALSO
OF KASOA.

2. THE LANDS COMMISSION ... **DEFENDANTS**
CENTRAL REGION, CAPE COAST.

JUDGMENT

The Plaintiff caused a writ of summons to be issued on the 4th day of September, 2018, against the Defendants and claimed for the following reliefs:

1. All that piece or parcel of land situate at Gomoa Ojobi in the Awutu Efutu Senya District in the Central Region of Ghana the boundary whereof commencing at Pillar CP1 IS 628 feet from the North-Eastern corner of culvert over a stream runs on a bearing of 61° 00 which bearing together with all further bearings hearing after mentioned is referred to the meridian 1° west longitude from CP1 runs on a bearing of 355°.00 for a distance of 600 feet to CP2, thence runs on OF 354°.00 for

a distance of 900 feet to CP3 thence runs on a bearing of 263° for a distance of 800 feet to CP4, hitting Ojobi-Senya Motor Road runs on bearing of 356°.00 for a distance of 748 feet to CP5 thence of bearing of 71°.00 for a distance of 949 feet to CP6, thence runs on a bearing of 110°.00 for a distance of 200 feet to CP7, thence runs of on bearing of 60°.00 for a distance of 700 feet to CP8, thence runs on a bearing of 65°.00 for a distance of 659 feet to CP9, thence runs on a bearing of 160°.00 for a distance of 713 feet CP10, thence runs on a bearing of 72°.00 for a distance of 1200 feet to CP11, thence runs on a bearing of 161°.00 for a distance of 1,600 feet to CP12, thence runs on a bearing of 251°.00 for a distance of 1,200 feet to CP13, thence runs on a bearing of 249°.00for a distance of 1,100 feet to CP14, thence on a bearing of 249°.00 for a distance of 970 feet to CP1 the point of commencement and closing approximate area of 125.33 acres which piece or parcel of land is more particularly delineated on plan attached hereto and thereon shown edged pink.

2. Damages for Trespass.
3. Recovery of Possession
4. An order directed at the 2nd Defendant to delete 1st Defendants name from its records as owner of any portion of the land in dispute on grounds of fraud.
5. An order setting aside the order of mandamus obtained dated 19th day of September, 2005 compelling the 2nd Defendant to plot the lease dated the 1st April, 1997 between Nana AborEwusi XIX and 21st Century Construction Company Limited which lease affects Plaintiffs prior acquired land as having been obtained by fraud.
6. Perpetual injunction restraining the Defendants his agents, servants, assign, workers or anybody claiming through them from having anything to do with the land in dispute.
7. Costs.

8. Any other order or orders this Honourable Court may deem fit.

THE BRIEF FACTS OF THE CASE

The Plaintiff is ordinarily resident in Accra, a business man, farmer and the Chief Executive officer of a reputable institution in Accra. The 1st Defendant is an Estate Development Company registered under the laws of Ghana whilst the 2nd Defendant is a state institution tasked among which to be in the business of registering land in the Central Region.

According to the Plaintiff, sometime in the year 1998 he acquired a lease of 99 years from the Asona family of Gomoa Ojobi, the allodial owners of the land in dispute for his farming purposes among other uses. The Plaintiff says the lease was reduced into writing and same was duly executed on the 2nd day of November 1998 between the then head of the Asona family of Gomoa Ojobi Ebusuapanyin Kwame Efishah and the Plaintiff.

The Plaintiff contends that he immediately went into possession having done due diligence before purchase of the land in dispute and has been in possession and control of same for the past over 20 years and till date without any interference of the physical possession and control of the disputed land till date. Plaintiff states that soon after acquiring the said land and took further possession by erecting pillars on it and regularly weeding same. In addition, Plaintiff engaged the services of a caretaker to take care of the land whiles he farms on same.

According to the Plaintiff, the disputed land is his own property duly acquired and registered and having been in possession and control over same till date the 1st

Defendant is estopped also caught by statute of limitation, leaches and aquissance from asserting any title over any portion of Plaintiffs acquired land, subject matter in dispute.

The Plaintiff says he has planted crops among others on the land till date and neither 1st nor 2nd Defendant has come to the land to make any claims over or done anything on any portion of the land in dispute. The Plaintiff further contends he conducted a search over his lands, the subject matter in dispute and realized a portion of his land has been plotted by the 2nd Defendant in favor of 1st Defendant without any recourse to him.

According to the Plaintiff, further inquiry into the issue of the registration shows the 1st Defendant fraudulently obtained an order of mandamus to compel 2nd Defendant to have portion of his land registered in 1st Defendants favour.

The Plaintiff says that the registration and plotting of portion of his land, subject matter in dispute by 2nd Defendant by order of mandamus on 19th day of September, 2005 of the lease dated the 1st April, 1997 between Nana AborEwusi XIX and 21st Century Construction Company Limited which lease affects Plaintiffs prior acquired land has been obtained by fraud and same must be cancelled by the Honourable Court as fraudulent, null and void.

PARTICULARS OF FRAUD

- I. By preparing a document dated 1st April, 1997 between Nana AwushieAbor XIX of Gomoa Fetteh and 21st Century Construction Company Limited over portion over Ojobi land knowing very well that the said Nana AwusieAbor XIX does not own any portion of the disputed land.

- II. That knowing very well that Ojobi lands are not part of Gomoa Fetteh lands, went ahead to deceive the court by obtaining order of mandamus to compel 2nd Defendant to register and plot 1st Defendants lease supra.
- III. That 1st Defendants grantor knowing Ojobi is a separate and distinct stool went ahead to prepare fraudulent documents and obtained the assistance of 2nd Defendant to have the said fraudulent lease registered without 2nd Defendant bringing the presence of Plaintiff or its registration to the court for him to come to court to protect his interest.
- IV. That the 2nd Defendant knowing very well that Gomoa Fetteh stool and Ojobi stool or family lands are separate and distinct but without any protest went ahead to register the fraudulent leased supra and plotted same without informing Plaintiff.

The Plaintiff further states that the land in dispute belongs to him and unless the court intervenes the continuous registration of 1st Defendants interest on his land will adversely affect his title and interest in his lands. The Plaintiff avers that he has been in correspondence with the 2nd Defendant who says they cannot delete the 1st Defendants records from his land unless by a court order.

According to the Plaintiff, he confronted 1st Defendant himself who admitted he has not acquired any interest in Plaintiffs land at Ojobi and that is why Plaintiff has not even met him on his plot before.

In his Statement of Defence, the 1st Defendant denied the assertions of the Plaintiff and stated that the court may order a licensed Surveyor to determine proper boundaries of the Ojobi lands and Fetteh lands. The 1st Defendant says that the Plaintiff could not have

obtained a land belonging to Gomoa Fetteh, the allodial title owners of the land from Ojobi stool.

The 1st Defendant says that he genuinely acquired the said land from the chief of Gomoa Fetteh-**Nana Abor Ewusi XIX** for the purpose of constructing his real estate. The 1st Defendant says that on several occasion the Plaintiff approached the 1st Defendant to sell the land to him but his offer was not accepted. The 1st Defendant says that he is surprised that the Plaintiff is now asserting that the 1st Defendant is not the owner of the property since he on several occasions pleaded with him to take money and regularize his purchase by registering same at the Lands Department for him.

1st Defendant state that the Plaintiff is not entitled to his claim and or at all and counter - claimed thus:

By way of counter claim, the 1st Defendant repeats all the averments in his defence and says further that the court should declare him the owner of the land since he has been in possession of the land and placed perpetual injunction on the Plaintiff, his assigns, agents, workmen from having anything to do with the sa

ISSUES FOR TRIAL

Issues filed by the Plaintiff

- i. Whether or not the land in dispute belongs to the Plaintiff.
- ii. Whether or not the land in dispute forms part of Gomoa Ojobi Lands or Fetteh land.
- iii. Whether or not Plaintiff has been in possession and control over the land in dispute for over 20 years
- iv. Whether or not Plaintiff is entitled to his reliefs sought.

Additional Issues filed by the 1st Defendant:

1. Whether or not the land in dispute forms part of the Gomoah Fetter lands;
2. Whether or not the land issue has been leased to the Defendant by the Allodial title holders.
3. Whether or not the Defendant, legally and properly registered same at the Land's Commission, Cape Coast.
4. Whether or not the Plaintiff have encroached on the Defendant's land.
5. And any other issues arising out of the pleadings.

On the 15th day of February 2019 all the parties were ordered by this court differently constituted to file their respective witness statements and survey instructions for the Director of Survey and Mapping Division of the Land's Commission to prepare a composite plan of the land in dispute.

However, the Defendants failed to submit their survey instructions for the composite plan to be drawn neither did they file their respective witness statements for case management conference after several hearing notices to that effect.

On the 18th day of February 2021 Case Management Conference was held and the case was adjourned to 2nd March 2022 for hearing. Interestingly, the 1st Defendant was almost always represented by Eric Ayensu but the 1st Defendant failed to file his witness statement as earlier indicted. As a result, the defence and counter claim of the 1st Defendant was strike out and the court proceeded to make a determination as to the claim of the Plaintiff.

THE BURDEN OF PROOF IN A CIVIL ACTION AND EXCEPTIONS

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.*

SEE ZABRAMA VRS. SEGBEDZI² and MAJOLAGBE VRS. LARBI AND ORS³

From the pleadings of the parties in this suit, the onus of proof is on the Plaintiff and the 1st Defendant who counter claim against the Plaintiff. . The nature of the onus is explained in the case of BANK OF WEST AFRICA LTD. VRS. ACKUN (1963) 1 GLR 176 where the Supreme Court stated 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

¹(NRCD 323)

²[1991] 2 GLR 223

³[1959] GLR 190 – 195

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 LIMITED[2021]
17G.M.J.321 S.C**

EXCEPTIONS WHEN FRAUD IS ALLEGED

In the instant case before this court, though a civil matter, fraud is also alleged which has a standard, proof beyond reasonable doubt though in a civil discourse such as the instant case.

This is provided in **Section 13(1) of the Evidence Act 1975, NRCD 323** which states:

“(1) In any civil or criminal action the burden of persuasion as to the commission by a party of a crime which is directly in issue requires proof beyond a reasonable doubt.”

The burden of proof in the instant case is both proof on the balance of the preponderance of the probabilities as well as proof beyond reasonable doubt though a civil case. The exception is provided under Section 13(1) of the Evidence Act 1975 when crime such as fraud or forgery among others, are alleged and are in issue for determination.

See:

1. SASU BANFO VRS. SINTIM [2012] 1 SCGLR 136 AT HOLDING 3.

2. FENAKU VRS. JOHN TEYE [2001 – 2002] SCGLR AT HOLDING 5.

The Plaintiff has a duty to establish his case by leading evidence sufficient enough to meet the legal standard set by law in a civil discourse where crime such as fraud is alleged and in issue, which standard is proof beyond reasonable doubt.

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 including the exceptions when fraud is alleged.

As indicated earlier that the Defendants failed to participate in the trial despite numerous hearing notices to that effect, that in itself does not entitle the Plaintiff to his reliefs. The Plaintiff has still the burden to lead evidence on the balance of probabilities to establish his 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 **ODAMETEY VRS. CLOCUH AND ANOTHER**⁴also 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)”

⁴[1989-90] 1 GLR 14-45

THE EVIDENCE, ANALYSIS AND THE APPLICABLE LAW

In the case of **ASARE AND OTHERS VRS. APPAU II**⁵, The Court Appeal per ABBAN, OSEI-HWERE AND AMUA-SEKYI JJ.A. at holding 1 held;

“(1) the common run of land suits in the courts had, as the plaintiff, a person who claimed title to land, suing as the defendant, a person in possession of the land. Such a defendant needed not, and usually did not, seek any relief in the proceedings, being content with things as they were. In that event, the plaintiff must rely on the strength of his own case, i.e. prove his title and not rely on the weakness of his opponent’s, i.e. lack of title in the defendant, so that if the plaintiff failed to prove that he was entitled to have a declaration made of his title to the land, the action ought to be dismissed, leaving the defendant in possession of the land”

In his quest to establish his claim, the Plaintiff in his evidence stated that he acquired a lease of 99 years in 1998 from the Asona family of the Gomoa Ojobi the allodial owners of the land in dispute for farming purposes among others, per **Exhibit ‘A’**. According to the Plaintiff, the lease was reduced into writing and executed on the 2nd day of November 1998 between the then head of family Ebusuapanyin Kwame Efisah and witnessed by the Chief of Ojobi at the time and other principal members of the family per **Exhibit ‘B’** and has been in opposition to date.

The Plaintiff said he has planted various farm crops such as mangoes, coconut, palm trees, cashews, cassava, maize, beans, ground nuts till date and neither the 1st Defendant nor the 2nd Defendant has come to the land in dispute or make any claims on the land or done anything on the land in dispute. The Plaintiff then tendered in evidence **Exhibit ‘C’ and ‘D’** which relates to his farms and a memorandum of understanding he entered

⁵[1984-86] 1 GLR 599-605

with the family to have the boundaries of the land earlier acquired from his predecessors to be surveyed.

The Plaintiff stated that a search conducted over his land revealed that a portion of his land subject-matter of this dispute has been plotted by the 2nd Defendant in favour of the 1st Defendant without any recourse to him. **See Exhibits 'E', 'F' and 'G'.**

According to the Plaintiff, further enquiry into issues of the registration shows that the 1st defendant fraudulently obtained an order of mandamus to compel the 2nd Defendant to have portion of his land registered in favour of the 1st Defendant. The Plaintiff in paragraph 19 of his witness statement or examination in chief, particularized the alleged fraud.

The court witness (CW1) who is a surveyor from the lands Commission tendered in evidence the composite plan the court tasked him to do and marked as **Exhibit 'CE1'** and duly cross examined by the Plaintiff who chose so to do unlike the 1st and 2nd Defendants who failed to cross examine the witness.

Indeed the landmark features found in the composite plan **Exhibit 'CE1'** was no different from the farm crops including fruits described by the Plaintiff who planted all of them which I find as a fact.

I further find that the land in dispute belongs to the Plaintiff per **Exhibits 'A' and 'B'** as well as 'CE1' particularly and the attitude of the 1st Defendant clearly shows that the land in dispute does not belong to him.

However, in order to establish the allegation of fraud, the Plaintiff has to lead evidence beyond reasonable doubt so to do. See: Section 13(1) of the Evidence Act 1975, NRCD 323.

In the case of STATE INSURANCE COMPANY LTD VRS. IVORY FINANCE CO LTD & OTHERS J4/48/2017 dated the 21st of February, 2018 (unreported and unedited), a matter that had travelled from the high Court through the Court of Appeal on an allegation of fraud dismissed by the High Court and affirmed by the Court of Appeal. The Supreme Court speaking through Anin Yeboah JSC (As he then was) now CJ stated at page 7.

“In these proceedings, the plaintiff had expressly pleaded fraud with sufficient particulars which the defendants strongly denied which in our respectful opinion was treated lightly by the two lower courts. Fraud qua fraud is such a serious vitiating factor that in judicial proceedings care must be taken not to suppress it when legitimately raised in the course of any proceedings”.

See also the case of NII OKWEI DOWUONA VI VRS. UTC ESTATES GHANA LTD & OTHERS SUIT NO. H1/186/2020 unreported dated 26th November, 2020 per WELBOURNE J. A. (PRESIDING), Agbevor J.A, Baffour J.A.

In the instant case, the Plaintiff particularized the alleged fraud and led sufficient evidence to demonstrate and to establish same. Indeed the Supreme Court speaking **Adinyira JSC** in the case of OSEI ANSONG & PASSION AIR LTD VRS. GHANA AIRPORT LTD J4/24/12 dated 23rd January, 2013 in a case when fraud was alleged stated that fraud is not fraud simply because it has been alleged. The pleadings as to fraud must demonstrate on its own the cause of action as the conduct of a Defendant being fraudulent. See also NII OKWEI DOWUONA VI VRS. UTC ESTATES GHANA LTD & OTHERS(SUPRA)

From the foregoing and in the instant case, it is mysterious as to how the land in dispute without recourse to the Plaintiff was plotted and registered in the name of the 1st Defendant. I further find that the 1st Defendant knew that the land belongs the

Plaintiff but went ahead to secure a mandamus to compel the 2nd Defendant to register the land in dispute in the name of the 1st Defendant which I find to have obtained by deceit and not a mere allegation. See: T. K SERBEH & CO LTD VRS. MENSAH⁶.

The Supreme Court in the case of APEAH AND ANOTHER VRS. ASAMOA⁷ holding 7 provided a remedy to guide the courts where instances of clear evidence of fraud is established though not pleaded. In so doing the Supreme Court in the case of APEAH AND ANOTHER VRS. ASAMOA (SUPRA) stated the position of the law thus:

“ Fraud will visitate everything. And not ordinarily, fraud should be pleaded. It has not been pleaded in the instant case. Notwithstanding the rules on pleading, the law was that where there was clear evidence of fraud on the face of the record, the court could not ignore.”

I therefore find and hold that the registration of the Plaintiff’s land by the 2nd Defendant in favour of the 1st Defendant was fraudulent.

I further find that the Defendants particularly the 1st Defendant by their overt and covert conduct trespassed unto the Plaintiff’s as it was a matter of time for them to physically occupy and possess the Plaintiff’s land as clearly described. YORMENU VRS. AWUTE & ORS ⁸CA holding 2

In the case of BARIMA GYAMFI AND ANOTHER VRS. AMA BADU⁹ the Supreme per Sakodee- Addo, Ollenu and Blay JJ.S.C stated among others that:

⁶2005 – 2006) SCGLR 347 @ 360 – 361

⁷[2003 – 2004] SCGLR 226,229

⁸[1987-88] 1 GLR 9

⁹(1963) 2GLR at 597

“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 and I find as a fact and hold same.

CONCLUSION

I have considered the totality of the evidence adduced before this court, the authorities so cited and the law and can irresistibly conclude on the balance of the probabilities that the Plaintiff led sufficient evidence to establish all her claims and also led evidence beyond reasonable doubt to establish the allegation of fraud in the plotting and registration of his land by the 2nd Defendant in favour of the 1st Defendant.

I will therefore proceed to enter judgment in favour of the Plaintiff against the Defendant for the reliefs as endorsed on the writ.

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

1. Declaration of title to all that piece or parcel of land situate at Gomoa Ojobi in the Awutu Efutu Senya District in the Central Region of Ghana the boundary whereof commencing at Pillar CP1 IS 628 feet from the North-Eastern corner of culvert over a stream runs on a bearing of 61° 00 which bearing together with all further bearings hearing after mentioned is referred to the meridian 1° west longitude from CP1 runs on a bearing of 355°.00 for a distance of 600 feet to CP2, thence runs on OF 354°.00 for a distance of 900 feet to CP3 thence runs on a bearing of 263° for a distance of 800 feet to CP4, hitting Ojobi-Senya Motor Road

runs on bearing of 356°.00 for a distance of 748 feet to CP5 thence of bearing of 71°.00 for a distance of 949 feet to CP6, thence runs on a bearing of 110°.00 for a distance of 200 feet to CP7, thence runs of on bearing of 60°.00 for a distance of 700 feet to CP8, thence runs on a bearing of 65°.00 for a distance of 659 feet to CP9, thence runs on a bearing of 160°.00 for a distance of 713 feet CP10, thence runs on a bearing of 72°.00 for a distance of 1200 feet to CP11, thence runs on a bearing of 161°.00 for a distance of 1,600 feet to CP12, thence runs on a bearing of 251°.00 for a distance of 1,200 feet to CP13, thence runs on a bearing of 249°.00for a distance of 1,100 feet to CP14, thence on a bearing of 249°.00 for a distance of 970 feet to CP1 the point of commencement and closing approximate area of 125.33 acres.

2. Damages for Trespass against 1st Defendant assessed at Fifteen Thousand Ghana Cedis (GHc15,000.00).

3. Recovery of Possession of the land in dispute.

4. An order directed at the 2nd Defendant to delete the name of 1st Defendants from its records as owner of any portion of the land in dispute.

5. An order of mandamus obtained on the 19th day of September, 2005 compelling the 2nd Defendant to plot the lease dated the 1st April, 1997 between Nana Abor Ewusi XIX and 21st Century Construction Company Limited which lease affects Plaintiffs prior acquired land is set aside.

6. Perpetual injunction restraining the 1st Defendant his Agents, servants, assignworkers or anybody claiming through the 1st Defendant from having anything to do with the land in dispute.

7. Costs of Thirty Thousand Ghana Cedis (GH¢30,000.00) is awarded against the 1st Defendant in favour of the Plaintiff.

(SGD)

JUSTICE ABOAGYE TANDOH
HIGH COURT JUDGE.

COUNSEL

MR. ROLAND HAMILTON, FOR THE PLAINTIFF.

NO LEGAL REPRESENTATION FOR THE DEFENDANTS.

/MK/