

IN THE SUPERIOR COURT OF JUDICATURE

IN THE HIGH COURT OF JUSTICE, HOHOE, HELD ON THURSDAY THE 20<sup>TH</sup> DAY  
OF OCTOBER 2022 BEFORE HIS LORDSHIP AYITEY ARMAH-TETTEH J.

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SUIT NO: E1/4/2021

EMMANUEL KOSI SEKE

--- PLAINTIFFS

VRS

1. CHRISTIAN AMETEFE

2. MICHAEL AMETEFE

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--- DEFENDANTS

PARTIES: - PLAINTIFF PRESENT

DEFENDANTS PRESENT

COUNSEL: MR. ERNEST AKATEY PLAINTIFF PRESENT

NO LEGAL REPRESENTATION FOR DEFENDANTS

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## J U D G M E N T

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By his writ of summons dated 20 August 2020 the Plaintiff claims against the defendants the following reliefs :

- a. *“Declaration of title to piece and parcel of land commonly known as Dentevi situate, lying and being at Gbi-Wegbe.*
- b. *Perpetual injunction restraining the defendants by themselves, their assigns, associates, workmen, privies from further trespassing unto Plaintiff's land.*

- c. Recovery of possession.*
- d. Declaration that the arbitration award published on 26/6/1991 published in(sic) against the defendants' predecessor in reference to the land the subject matter in dispute operates as "estoppel per rem judicatum" against the defendants .*
- e. Costs including Solicitor's fees*

The defendants entered appearance and filed a defence denying the claim of plaintiff but did not counter claim.

### **PLAINTIFF'S CASE**

The case for the plaintiff as can be gleaned from his pleadings is that he is the Head of family of the Amii family of Gbi-Wegbe. According to Plaintiff, the subject matter in dispute was founded by his forefather Togbe Amii long ago and that members of the Amii family have been in active possession of the land by cultivating and alienating portions to strangers to cultivate crops. It is the further case of the Plaintiff that in 1991 defendants alienated portion of the land to one Kodzo Abudu alias Abogyese and the matter was sent to Togbe Keh XI for arbitration and an award was published in favour of Plaintiff's family. According to Plaintiff that the defendants have recently trespassed onto the said land hence, this action.

### **DEFENDANTS' CASE**

The case of the defendants is that the Dentevi land the subject matter in dispute belongs to 1<sup>st</sup> Defendant's father Togbe Geliste Ametefe having redeemed the said from a spiritual curse imposed on the land after one of the ancestors called Tenge invoked a curse on the land after killing his cousin called Akabua. The defendants denied the claim of the plaintiff that the arbitration award was in favour of the plaintiff. According to defendants, the case of plaintiffs at the arbitration was dismissed.

At the close of pleadings, the following issues raised in the application for directions were set down for the determination of the suit:

1. *Whether or not Defendants have trespassed unto Plaintiff's land.*
2. *Whether or not there was a valid arbitration between the parties on the land the subject matter in dispute and whether it operates as estoppel between the parties.*
3. *Whether or not the land belongs to the Amii family.*

### **BURDEN OF PROOF**

In civil cases, it is trite law that the parties are required to prove their respective cases on the preponderance of probabilities.

In **Takoradi Flour Mills v. Samir Faris** [2005-2006] SCGLR 882 at 900 the Supreme Court held as follows:

*“To sum up this point, it is sufficient to state that this being a civil suit, the rules of evidence require that the plaintiff produces sufficient evidence to make out his claim on a preponderance of probabilities, as defined in section 12(2) of the Evidence decree 1975(NRCD 323). Our understanding of the rules in Evidence Decree, 1975 on the burden of proof is that in assessing the balance of probabilities, all the evidence, be that of the Plaintiff or the defendant, must be considered and the party in whose favour the balance tilts is the person whose case is more probable of the rival versions and is deserving of a favourable verdict.”*

In proof of their case the Plaintiff testified and called one witness. The 1<sup>st</sup> defendant also testified for himself on behalf of the 2<sup>nd</sup> defendant, and they also called two witnesses.

Since a valid plea of estoppel prevents a court from going into an issue already adjudicated upon, I will deal with issue 2 which deals with the arbitration and estoppel.

**Issue 2:** *Whether or not there was a valid arbitration between the parties on the land the subject matter in dispute and whether it operates as estoppel between the parties.*

It is the testimony of the Plaintiff that in 1991 defendants' predecessor Kwami Ametefe Galiste alienated portion of the disputed land to one Kodzo Abudu alias Abogyese and Plaintiff's family protested to such alienation and the matter was sent to Togbe Keh XI, the Chief of Gbi-Wegbe where the parties hail from to arbitrate on. It is the further testimony of the Plaintiff that after deliberations an award was published in favour of his family.

The defendants denied that the arbitral award was in favour of the plaintiff's family. Since the Plaintiff claims there was valid arbitration and the award was in favour of his family, a claim the defendant denied, the plaintiff has the evidential burden to prove the existence of a valid arbitration and that the award was in favour of his family

The principle of law is that where all the requirements for a valid customary arbitration have been established, the award made will be binding on the parties and their privies and neither party can resile from it and the parties will be estopped from further litigation over the same subject matter.

In **Budu II v. Ceaser and others** (1959) GLR 410 the following were given as the essential elements of customary arbitration:

- a. Voluntary submission by the parties of their dispute to an arbitrator for the purpose of having the dispute decided formally but on its merits.*
- b. Prior agreement by both parties to accept the award.*
- c. The award must not be arbitrary but must be arrived at after the hearing of both sides in a judicial manner.*

- d. *The practice and procedure for the time being followed in the Native Court or Tribunal of the area must be followed.*
- e. *Publication of the award.*

Also, in **Solomon Tackie and Ago Bannerman (suing as joint heads of Tackie Families) vs John Nettey (substituted by Fred Bibi Ayimeh) and Sampson Kofi Badu [2021] DLSC 10172** at page 21, the Supreme Court per Doste JSC held as follows:

“Further, it should be noted that Ollenu J, (as he then was ) made the following notable judicial pronouncement:- ***“In the case of arbitration, the award is binding upon the parties to it whether or not they accept it, the parties cannot resile after the award has been published.”*** Yaw Oppong, in his invaluable book *“Contemporary Trends in the Law of Immovable Property in Ghana”* after discussing and analysing basic principles on arbitration, the new ADR Act, 2010 (Act 798) sections 89-112 on customary arbitration and reviewing case like the following

- *Pong v Mante IV & OTHERS (1964) GLR 593 AT 596*
- *Ankra vs Dabra & Anr. (1956) WAR 89*
- *Manu vs Kontor [1965] GLR 375 SC*
- *Nyasemwhe vs Afibiyesan [1977] 1 GLR 27*
- *Asare vs Donkor [1962] 2GLR 176*

*Settled on the following as key requirements for a valid customary arbitration*

- i. *Voluntary submission to the arbitration*
- ii. *Prior agreement to accept the award*
- iii. *Publication of the award.*

The binding nature of a valid customary arbitration has been codified in Section 109 of the Alternative Dispute Resolution Act, 2010 (Act 798) which provides as follows:

*“An award in a customary arbitration*

*(a) Is binding between the parties and a person claiming through and under them.”*

In proof of his case that there was a valid customary arbitration and the award was in favour of his family, the Plaintiff testified as follows:

*“That in 1991 Defendants’ predecessor Kwami Ametefe Galiste alienated portion of the land the subject matter in instant suit to Kodzo Abudu alias Abogyese . That the Plaintiff’s family protested on such alienation to Kodzo Abudu and the matter was sent to Togbe Keh XI the Chief of Wegbe where the parties hail from. After thorough deliberations into the matter an arbitration award was published in favour of Plaintiff’s family.”*

The Plaintiff tendered in evidence, the arbitral award as Exhibit ‘A’.

On this issue the 1<sup>st</sup> defendant who testified for himself and on behalf of the 2<sup>nd</sup> defendant testified as follows:

*“In 1990, Alex Awumey and the Plaintiff Emmanuel Seke tried to collect the Denteve land from the Ametefe family on the grounds that the land belong to their grandfather called Togbe Amii. There were arbitrations held at Togbe Dakpoe II and Togbe Keh XI’s place where their claim of the Denteve land was not successful.*

Under cross examination of the 1<sup>st</sup> Defendant the following took place:

*Q. Do you also know of any arbitration by Togbe Keh on the same Denteve land?*

*A. Yes my Lord.*

*Q. When did you get to know about the said arbitration by Togbe Keh?*

*A. That was somewhere in 1992.*

*Q. You agree with me that there was an award published by Togbe Keh in his arbitration on the Denteve land?*

*A. My senior brother Kwamivi Ametefe who was one of the defendants did not go in for any award to my knowledge.*

Further under cross examination:

*Q. During the lifetime of Kwamivi Ametefe did he take any step to set aside the arbitration award of Togbe Keh ?*

*A. He did not take any action to set aside the award, but it was when the Plaintiff and Alex Awumey were harassing him to take the land away from him that he came to court.*

DW 1 and DW2 also admitted that there was a valid customary arbitration.

This is what ensued when DW1 was cross examined:

*Q. Do you remember that there was an arbitration between Kwami Ametefe Geliste and Fred Awumey and Emmanuel Seke?*

*A. Yes, I do.*

*Q. You also remember that the arbitrator was Togbe Keh Chief of Gbi-wegbe.*

A. Yes

And this is what ensued when DW2 was cross examined:

*Q. Do you recall that in 1991 Togbe Keh arbitrated on the said Denteve land between one Kwame Geliste and Alex Awumey ?*

*A. Yes I remember.*

*Q. So you know the outcome of the arbitration?*

*A. Yes that they can all cultivate or benefit from the land because all of them trace their lineage to one grandfather.*

So, the parties do not dispute that there was an arbitration before Togbe Keh XI in respect of ownership of the Denteve land and that an award was published. The validity of the arbitration is not in dispute. The disagreement of the parties to the arbitration is the nature of the award that was published. The Plaintiff says that award was in his family's favour and the defendants also claim that the Plaintiff's case at the arbitration was dismissed. What was the award that was published?

From Exhibit 'A' the dispute was between the Alex Awumey, Kosi Hiagbenu (plaintiff herein) as plaintiffs and Kwamivi Ametefe, Kudjo Grepo and Seth Akabuaste as defendants.

The award was as follows:

*"Therefore the said land should be within the control of both Alex Awumey and Kwamivi Ametefe and also the part given by Kwamivi Ametefe to one Kwadzo*



*Abudu for farming should be shared equally between both Alex Awumey and Kwamivi Ametefe."*

In his evidence the Plaintiff said the award of the arbitration was in his favour of his family. Yet under cross examination he admitted that the 1<sup>st</sup> defendant's brother who was a party to the arbitration was to work on the land jointly with the plaintiff and his brother Alex Awumey. This is what ensued during cross examination.

*Q. Did the award of the arbitration give you the power to drive the Ametefe family from the land?*

*A. You are fighting for ownership that is why I brought you to Court.*

*Q. The arbitration gave the children of Ametefe and Alex Awumey to have authority over the land.*

*A. The outcome of the arbitration was that the land belongs to Godom family and after the land was redeemed by your father, he sold portion of the land as signs of gratitude. **The outcome of the arbitration was that my brother Alex Awumey and the Ametefe family should cultivate the land and the proceeds shared among them.** (Bold italics mine)*

*Q. The arbitration award gave me power to be on the land as a son of Gelesti and you have no power to drive me away from the land.*

*A. Your name Christian Ametefe was not in the exhibit 'A'.*

The arbitration was between the Plaintiff and his brother Alex Awumey on one side and as against the brother of the defendants Kwamivi Ametefe and 2 others. The arbitrators found that the land in dispute, the Dentevi land was property of Godom and that but for

Gelesti (the father of the Defendants) and Kwamivi Ametefe the said land would have become other person's property. The award published was that the said land should be within the control of both Alex Awumey and Kwamivi Ametefe and also the part given by Kwamivi Ametefe to one Kwadzo Abudu alias Abogyese for farming should be shared equally between both Alex Awumey and Kwamivi Ametefe.

The Plaintiff as a party to the arbitration is bound by the award and cannot resile from it. Defendants are the children of Galiste and brothers of Kwamivi Ametefe . They derive their interest in the land from Kwamivi Ametefe and as such successors take benefits under the arbitration as successors of the Kwamivi Ametefe. The defendants by their entering onto the disputed land cannot be described as trespassers by the Plaintiff.

The arbitration of Togbe Keh XI was a valid customary arbitration and the award published is binding on both parties to this suit. The plaintiff cannot refer the Defendants as trespassers on the land. I find and hold that both parties are entitled to farm on the land as of right as parties and successors to the parties to the arbitration of Togbe Keh XI.

In conclusion I will dismiss the claim of the plaintiff in its entirety. I award defendants costs of Ghs2,500.00

(SGD)

AYITEY ARMAH-TETTEH J.

(JUSTICE THE OF HIGH COURT)