

IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT OF JUSTICE WINNEBA, HELD ON TUESDAY THE 14TH DAY OF FEBRUARY, 2023, BEFORE HIS LORDSHIP, JUSTICE ABOAGYE TANDOH, HIGH COURT JUDGE.

SUIT NO. EI/115/22

DIANA DARKO

...

PLAINTIFF

VS

1. CHRISTOPHER KOBINA SAMPSON

...

DEFENDANTS

2. OBED DANQUAH

3. LANDS COMMISSION

J U D G M E N T

The Plaintiff on the 22nd day of July 2022 caused a Writ of Summons to be issued against the Defendant herein and claimed for the following reliefs:

- a. *Declaration of title to all that piece or parcel of land known as plot number 221 Block A Odupongkpehe Section 23, Kasoa with building thereon numbered H/NO BD 43/23*
- b. *A further declaration that the registration of 1st and 2nd defendants documents by the 3rd Defendant which touches and affects Plaintiff's land is null and void.*
- c. *An order directed at the 3rd Defendant to expunge from its records any transaction/documents affecting or touching the land described at relief (a) above which is in favour of the 1st and 2nd Defendants.*

d. A further order compelling the 3rd Defendant to register the Plaintiff as the owner of the land described at relief (a) above.

e. An order of perpetual injunction restraining the 1st and 2nd Defendants from having anything to do with the land in issue.

f. Costs

THE CASE OF THE PLAINTIFF

The Plaintiff contends that she is the owner of plot number 221 Block A Odupongkpehe Section 23, Kasoa with building thereon numbered H/NO BD 43/23. According to the Plaintiff, the 1st and 2nd Defendants are persons whose names have been erroneously registered by the 3rd Defendant in respect of her land, plot number 221 Block A Odupongkpehe Section 23, Kasoa.

The Plaintiff avers that the 3rd Defendant is a statutory body charged with a mandate to among other things to register deeds and instruments that affect land throughout the country.

The Plaintiff avers that she acquired the said parcel of land in the year 2007 from one Mr Amedekanya at the cost of GH¢ 6,000.00. The Plaintiff further says that her grantor only gave her a site plan and promised to execute a deed transferring his interest to her but sadly died shortly thereafter.

According to the Plaintiff, she was put in vacant possession of the land before the death of her grantor and she began constructing her house in the same year (2007) without any let or hindrance from any quarters including the Defendants.

Furthermore, the Plaintiff contends that she completed the construction of her house in the year 2008 and moved in with her family. According to the Plaintiff,

since 2007 to date, she has remained in peaceful possession and occupation of the land in issue without any let or hindrance.

The Plaintiff contends that she sought to register her interest in the land recently with the 3rd Defendant but to her utmost surprise, she was informed to by a search report that her land is affected by transactions in the name of the 1st and 2nd Defendants.

According to the Plaintiff, she caused her Solicitors to write to the 3rd Defendant demanding that the names of the 1st and 2nd Defendants be expunged since they do not have any right, title or interest in her land but the 3rd Defendant has refused, neglected and failed to heed to her request. The Plaintiff avers that apart from the fact that she validly acquired the land from her grantor, she has been in open and visible possession of the land for 15 years now without any challenge from anyone including the 1st and 2nd Defendants.

It is the case of the Plaintiff that, having been in possession of the land for more than twelve years without any opposition, let or hindrance, the Plaintiff has acquired an indefeasible title to the land any purported interest of the 1st and 2nd Defendants in the land is caught by laches and acquiescence and same is statute barred.

THE CASE FOR THE DEFENDANTS

The 1st and 2nd Defendants were all duly served with all the processes including the Writ, Statement of Claim and several hearing notices to enable them partake in all the proceedings yet they failed to file appearance neither did they file any defence to the suit.

Even though the 3rd Defendant file an appearance to the suit on the 8th day of August 2022, the 3rd Defendant failed to file any defence nor partake in the trial of this matter. In the case **Republic v High Court (Human Rights Division) Accra Ex –Parte Akita [2010 SCGLR 374 and 384** the Supreme Court speaking through **Brobbeey JSC** stated that “A person who has been given the opportunity to be heard but deliberately ignored that opportunity to satisfy his or her own decisions to boycott the proceedings of the court cannot later complain that he or she was not heard” (Emphasis mine).

ISSUES FOR TRIAL:

1. Whether or not Plaintiff has title to the land in dispute.
2. Whether or not Limitation will avail the Plaintiff

THE BURDEN OF PROOF IN A CIVIL ACTION

The law of proof in Ghana is regulated by the Evidence Act 1975 NRCD 323 and the common law established by sound legal opinions of the Superior Courts in Ghana and in other jurisdictions. The general position is captured in the principle ‘who alleges must prove’. This position of the law has been affirmed by **Kpegah J. A.** (as he then was) in the case of **ZABRAMA VRS. SEGBEDZI (1991) 2 GLR 221 at 224** as follows:

“.....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 credible 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 the burden”.

This position is also provided under **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”.

Also, **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 (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.*

(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) *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 V. SEGBEDZI² and MAJOLAGBE V LARBI AND ORS³

THE EVIDENCE, THE ANALYSIS AND THE APPLICABLE LAW

The main issue for determination in this matter is whether or not the Plaintiff has any title to the land in dispute. The next issue to consider gleaning from the pleading is whether or not limitation will avail the Plaintiff.

² [1991] 2 GLR 223

³ [1959] GLR 190 – 195

The Plaintiff's Lawful Attorney Kwakuvi Ocloo gave evidence for and on behalf of the Plaintiff and informed the court the Plaintiff acquired the land in dispute in 2007 from one Amedekanya at the cost of GH¢ 6,000.00 (Six Thousand Ghana Cedis). The Plaintiff's Attorney then tendered in evidence the Power of Attorney issued to him per **Exhibit A** as well as the Site Plan relating to the land in dispute per Exhibit B which was given to the Plaintiff when he bought the land.

The Plaintiff's Lawful Attorney further stated that the Plaintiff constructed his house and completed same without any let or hindrance from any person including the Defendants as demonstrated by **Exhibit C**. According to the Plaintiff's Attorney, the Plaintiff caused his Lawyer to write to the 3rd Defendant to expunge the names of the 1st and 2nd Defendants when he discovered by a search the Land's Commission (3rd Defendant) they had registered his land and supported same with **Exhibit D** and E respectively.

The Plaintiff's Attorney then tendered in evidence a statutory declaration in respect of the disputed land as **Exhibit F**.

In the case of **ASARE AND OTHERS v. APPAU II** [1984-86] 1 GLR 599-605

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 the instant case before this court, the Plaintiff apart from the statutory declaration **Exhibit F** also tendered in evidence his site plan which positively describes the identity limits of the land she is claiming.

See:

- 1. Edmund Danso v Moses Adjei [2013] 58 GMJ 71 @ 91 – 92**
- 2. Kwabena v Atuahene [1981] GLR 136 CA**
- 3. Nyikplorkpo v Agbodotor [1987 – 88] GLR 165**
- 4. Jass Co ltd & Anor v appau & Anor [2009] SCGLR 265 @ 275**

From the foregoing, I find that the Plaintiff per Exhibits B, C,D D, E and F has clearly demonstrated that she has title to the land in dispute on the balance of the preponderance of the probabilities and is entitled to same.

Also, **Section 10(1) of the Limitation Act, 1972** states;

- (1) *"A person shall not bring an action to recover a land after the expiration of twelve years from the date on which the right of action accrued to the person bringing it or, if it first accrued to a person through whom the first mentioned claims to that person."*

Section 10 (7) of the Limitation Act also reads;

(7) “For the purpose of this section, “adverse possession” means possession of a person in whose favour the period of limitation can run”

The combined effect of sections **10(1) and 10(7)** is that the period of limitation runs in favour of the person in adverse possession. Granted without admitting that the Plaintiff was in adverse possession of the land in dispute since 2007 and because the Defendants and those claiming through him idly sat down doing nothing, then the Defendants are arguably barred to initiate an action against the Plaintiff. Therefore any attempt on the Defendants so to do will be a near impossibility.

See:

1. Klu v Konadu Apraku [2009] SCGLR 741 @ 746 – 747

2. Djin v Musah Baako [2007- 2008] SC GLR 686

3. Ago Sai & Others v Kpobi Tetteh Tsuru III [2010] SCGLR 762 @ 772

In the case of **BARIMA GYAMFI AND ANOTHER V AMA BADU**⁴ 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”

⁴ (1963) 2GLR at 597

From the foregoing and in the instant case, the Plaintiff led evidence on the balance of the preponderance of the probabilities to establish all her claims.

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

a. Declaration of title to all that piece or parcel of land known as part number 221 block A Odupongkpehe section 23 Kasoa with building thereon unnumbered house BD 43/23.

b. A further declaration that the registration of the 1st and 2nd Defendants' documents by the 3rd Defendant which touches and affects the Plaintiff's land is null and void.

c. The 3rd Defendant is ordered to expunge from its records and transaction or documents affecting or touching the land described at relief (a) above which is in favour of the 1st and 2nd Defendants.

d. A further order directed at the 3rd Defendant to register the Plaintiff as the owner of the land described in relief (a) above.

e. An order of perpetual injunction restraining the 1st and 2nd Defendants from having anything to do with the land in issue.

f. Cost of Forty Thousand Ghana Cedis (GH¢40,000.00) is awarded against the 1st and 2nd Defendants in favour of the Plaintiff.

JUSTICE ABOAGYE TANDOH

HIGH COURT JUDGE

WINNEBA.

COUNSEL

B. B. SIMPSON ESQ, FOR THE PLAINTIFF.

/MK/

