

IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT OF JUSTICE
WINNEBA, HELD ON MONDAY THE 15TH DAY OF MAY, 2023, BEFORE HIS
LORDSHIP, JUSTICE ABOAGYE TANDOH, HIGH COURT JUDGE.

SUIT NO. E12/057/22

1. NICHOLSON AMOASHIE ... PLAINTIFFS

2. GEORGE AMOASHIE

SUING AS EXECUTORS/BENEFICIARIES

VS

1. MARY AMOASHIE ... DEFENDANTS

2. OSEI YAW

3. AMOS AYITEY

J U D G M E N T

The Plaintiff on the 19th day of August, 2022 caused a Writ of Summons to be issued against the Defendants herein and claimed jointly and severally against them for the following reliefs:

(a) A declaration that the plaintiffs are the beneficiary owner of H/NO: QC

15/12, Queen City, Ofaakor pursuant to the devices in the deceased's

Will and the grant of the probate to them.

(b) An order ejecting the Defendants from the room each of them occupies in the said house.

(c) Perpetual injunction to restrain the Defendants, their assigns, privies, personal representatives etc. from interfering with the Plaintiff's peaceable possession and occupation of disputed house, and also from laying adverse claim to the disputed property.

(d) Costs including legal costs.

THE CASE OF THE PLAINTIFFS

According to the Plaintiffs, they are the executors and beneficiaries under the Will of the late Nicholas Mashie (deceased) of Ofaakor in the Awutu-Senya East Municipality in the Central Region of Ghana and they sue in that capacity.

The Plaintiffs aver that, the 1st Defendant is a sister of the aforesaid deceased, Nicholas Amoashie, and lives in one of the rooms of a house bequeathed to the Plaintiffs in the said Will. The Plaintiffs further contend that the 2nd Defendant is a son of the deceased's elder daughter and also lives in the room bequeathed to the Plaintiffs whilst the 3rd Defendant operates a barbering shop in a storeroom bequeathed to the Plaintiffs in the said Will.

The Plaintiffs state that their deceased father died testate on 15th May, 2021 at Korle-Bu Teaching Hospital and was buried on the 25th day of September, 2021. The Plaintiffs aver that on the 8th day of November, 2021 the last Will of their deceased father was read at

the High Court premises, Winneba in the presence of Peter Amoashie (Brother of the Testator); Emelia Amoashie (Daughter of Testator); Nicholas Amoashie (Son and Executor); and George Amoashie (Son and Executor).

The Plaintiffs state that prior to the reading of the Will, the Registrar of the High Court, Winneba per a letter dated 27th October, 2021 invited Mary Amoashie, the 1st Defendant and one Mercy Amoashie both sisters of the testator to attend the reading of the said Will together with those named in paragraph 6 of the Statement of Claim herein but both of them refused/failed to attend.

According to the Plaintiffs, probate of the last Will of the deceased testator was granted to the Plaintiffs, as executors of the said Will, by the High Court, Winneba on 16th March, 2022.

The Plaintiffs state that by paragraphs 9, 10, 11, and 12 of the said Will which was successfully proved by the Plaintiffs as Executors, the testator devised all the rooms in self-acquired house No: QC 15/12, Queen City, Ofaakor together with six stores equally and absolutely to the Plaintiffs.

The Plaintiffs state that prior to his death, the testator allowed the 1st and 2nd Defendant to live in a room each in the said house while the 3rd Defendant claims to have rented one of the store rooms in the house.

The Plaintiffs further aver that prior to their father's death the 1st Defendant was prevented by the deceased from preventing the 1st Plaintiff from putting up a building on the part of his father's house and was told by Plaintiff's father that she did not have any interest and or control over the said property.

The Plaintiffs aver that two weeks after the death of their father, members of their Father's family made an attempt to distribute his property but the plaintiff resisted same and prevented them from doing so.

The Plaintiffs also aver that after their resistance to the sharing of their father's property the 1st and 2nd Defendant started to issue verbal threats and also cast insinuations and insults on them without any just cause.

According to the Plaintiffs, upon obtaining the probate they caused their lawyer to write a letter to the Defendants to vacate the rooms which they occupy in the said house within one month from the date of receipt of the letter and yield vacant possession of same of the Plaintiffs as beneficiary owner due to the behavior put up by the Defendants. The Plaintiffs state that the Defendants were duly served with the said letter on 25th June, 2022.

The Plaintiffs state that upon receipt of the letter, the Defendants failed to vacate their respective rooms but rather intensified their hostile behavior or conduct towards the Plaintiffs by issuing threats and verbal insults to the Plaintiffs.

The Plaintiffs aver that the 1st Defendant also summoned them before some elders from their family to which the testator also belonged, who

asked them why they prepared the Will and the Plaintiffs denied being authors of the Will.

According to the Plaintiffs, the Defendant's refusal to vacate the rooms they occupy in the said house, and their hostile behavior or conduct towards them is an affront to their title to the said house devolved unto them through their father's Will.

The Plaintiffs state that the said conducts of the Defendants are unlawful and the Defendants will continue with their unlawful behavior unless restrained by an order of this Court.

THE CASE FOR THE DEFENDANTS

As indicated earlier that the Defendant failed to participate in the trial despite hearing notices to that effect, but that in itself does not entitle the Plaintiffs to their reliefs. Interestingly all the parties were present when the judgment was been read and sat in till the judgment was read, confirming that they were aware of the pendency of this suit. However, notwithstanding the failure of the Defendants to partake in the trial, the Plaintiffs still have the burden to lead evidence on the balance of probabilities to establish their 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 unless there is a justification to the contrary. **See the case of Ex- Parte State Housing Company Ltd [NO 2] 2009 SC GLR 185.**

1 [2009] SC GLR 185

Also in the case of **Republic v High Court (Human Rights Division) Accra Ex –Parte Akita [2010] SCGLR 374 and 384** the Supreme Court speaking through **Brobbey 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).

THE ISSUES FOR TRIAL

The issue for determination is whether or not the Plaintiffs are beneficiary owners of H/NO: QC 15/12, Queen City, Ofaakor pursuant to the devices in the deceased's Will and the grant of the probate to them.

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 v NANA FITZ [2007 – 2008] 2 SCGLR 879

²[2010] SCGLR 374 and 384

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.

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

³ [2007 - 2008] 2 SCGLR 879.

⁴ [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 v FKA COMPANY LTD [2009] SCGLR 65, ZABRAMA V. SEGBEDZI² and MAJOLAGBE V 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 a civil discourse.

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

THE EVIDENCE, ANALYSIS AND THE APPLICABLE LAW

In his evidence before this court, the 1st Plaintiff Nicholson Amoashie stated that he lives at Queen City, Ofaakor and an Executor and beneficiary under the Will of the late Nicholas Amoashie (deceased) of Ofaakor in the Awutu-Senya East Municipality in the Central Region of Ghana.

The 1st Plaintiff further stated that the 2nd Plaintiff is also a Co-Executor and Beneficiary under the Will of the late Nicholas Amoashie (Deceased). Whilst the 1st Defendant is a sister of the aforesaid deceased, Nicholas Amoashie, according to him, lives in one of the rooms of a house bequeathed to the Plaintiffs in the said Will. The 1st Plaintiff also said the 2nd Defendant is a son to the deceased's eldest daughter and also lives in a room bequeathed to them whilst the 3rd Defendant operates a barbering shop in a storeroom bequeathed to him and the 2nd Plaintiff in the said Will.

According the 1st Plaintiff, their deceased father died testate on 15th May, 2021 at Korle-Bu Teaching Hospital and was buried on 25th day of September, 2021. He further stated

⁵[2009] SCGLR 65

that on the 8th day of November,2021 the last Will of their deceased father was read at the High Court premises, Winneba in the presence of Peter Amoashie (Brother of the Testator); Emelia Amoashie (Daughter of the Testator); 1st Plaintiff (Son and Executor); and George Amoashie the 2nd Plaintiff (Son and Executor) (Copy of Will attached as **Exhibit A**).

The 1st Plaintiff contended that even though the 1st Defendant and one Mercy Amoashie sisters of the Testator were invited for the reading of the Will, they refused or failed to attend.

The 1st Plaintiff further stated that the probate of the last Will of the deceased testator was granted to them , as executors of the said Will, by the High Court, Winneba on 16th March,2022 (Copy of probate attached as **Exhibit B**).According to the 1st Plaintiff, paragraphs 9,10,11, and 12 of the said Will which was successfully proved by the Plaintiffs as Executors , the testator devised all the rooms in his self-acquired house No: QC 15/12,

Queen city, Ofaakor together with six stores equally and absolutely to them.

The 1st Plaintiff further stated that prior to his death, the testator allowed the 1st and 2nd Defendants to live in a room each in the said house while the 3rd Defendant claims to have rented one of the store rooms in the house.

The 1st Plaintiff averred that prior to their father's death the 1st Defendant was prevented by the deceased from preventing him from putting up a building on part of his father's house and was told by his father that she did not have any interest and or control over the property.

According to the 1st Plaintiff, upon obtaining the probate they caused their lawyer to write a letter to the Defendants to vacate the rooms which they occupy in the said house

within one month from the date of receipt of the letter and yield vacant possession of same to the Plaintiffs as beneficiary owners, due to the behavior put up by the Defendants.

The 1st Plaintiff also stated that, upon receipt of the letter the Defendants failed to vacate their respective rooms but rather intensified their hostile behavior and conduct towards them by issuing threats and verbal insults against them.

The 1st Plaintiff said that after they served them the writ and statement of claim in the instant suit, the 1st and 2nd Defendants have packed out of their rooms but failed to hand over the keys to them while the 3rd Defendant has refused to vacate the store room he occupies.

According to the 1st Plaintiff, the conducts of the Defendants are unlawful and the Defendants will continue with their unlawful behavior unless restrained by an order of this Court.

The 1st Plaintiff stated that, to the best of his knowledge and belief the Defendants have no interest in the disputed property and prayed the Court to grant them all their reliefs.

The evidence adduced by the 2nd Plaintiff largely corroborated that of the 1st Plaintiff and same was also not different from their pleadings. The 2nd Plaintiff clearly stated his evidence that he also relies on the evidence and the exhibits tendered by the 1st Plaintiff.

An examination of the evidence led by the Plaintiffs revealed that their evidence was not different from their pleading but doing so does not in any way depart from the Mojalagbe principle neither is it fatal to the case for the Plaintiffs. What is important is to ascertain whether the evidence led in repeating the contents of the pleadings meet the

standard which standard is the preponderance of the balance of the probabilities. See **MOJOLAGBE VRS. LARBI (1959) GLR 190 at 192**

In the case of **ODAMETAY v. CLOCUH AND ANOTHER [1989-90] 1 GLR 14-45**, the **SUPREME COURT**, per **ADADE, TAYLOR, FRANCOIS, WUAKU AND AMUA-SAKYI JJ.S.C.** in holding (1)

Held:

6 (1959) GLR 190 at 192

7(1989-90] 1 GLR 14-45,.

“(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).

SEE :BARIMA GYAMFI AND ANOTHER V AMA BADU⁴

In the instant case before this court and per the evidence on record, the Plaintiffs led evidence on the balance of the preponderance of the probabilities to establish their claim.

I have considered and also examined the evidence adduced, the applicable law and authorities cited and hold the view that the Plaintiffs lead evidence by the preponderance of balance of the probabilities to establish their claims.

Accordingly, judgment is entered in favour of the Plaintiffs against the Defendants jointly and severally for the following reliefs;-

- a. A declaration that the Plaintiffs are the beneficial owners of H/No. QC 15/12, Queen City, Ofaakor pursuant to the demise in the deceased WILL and the grant of the probate to them.
 - b. An order is issued to eject the Defendants from the room each of them occupants in the house number QC 15/12, Queen City, Ofaakor.
 - c. Perpetual injunction order is issued to retrain the Defendants, their assigns, privies, personal representatives from interfering with the Plaintiffs' peaceful possession and occupation of the disputed house No. QC 15/12, Queen City, Ofaakor and also from being
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adverse claim to the disputed property.

Cost of GH¢10,000.00 (Ten Thousand Ghana Cedis) is awarded against the Defendants in favour of the Plaintiffs.

(SGD)

H/L JUSTICE ABOAGYE TANDOH

JUSTICE OF THE HIGH COURT

HIGH COURT, WINNEBA.

SAMSON ODDOYE ESQ, HOLDING THE BRIEF OF EMMANUEL EGYIR

ESQ, COUNSEL FOR PLAINTIFFS.

