

IN THE SUPERIOR COURT OF JUDICATURE
IN THE HIGH COURT OF JUSTICE LAND COURT 7
SITTING IN ACCRA ON FRIDAY THE 28TH DAY OF APRIL, 2023
BEFORE HIS LORDSHIP EMMANUEL AMO YARTEY J.

SUIT NO. LD/0514/2021

DAVID ODAMTTEN ABBEY

...

PLAINTIFF

VS.

SHANTY ANNAN

...

DEFENDANT

PARTIES: PLAINTIFF PRESENT

DEFENDANT PRESENT

J U D G M E N T

At the Application for Directions stage the parties joined issues as follows:

1. Whether or not the land in dispute and the building thereon belonged to the Defendant’s grandfather P.J.G. Wilkinson;

2. Whether or not the Defendant was at all material times in possession of the land in dispute.
3. Whether or not Plaintiff has been in occupation of the land since 2015.
4. Whether or not the Plaintiff took the necessary steps to ascertain the true ownership of the land in dispute at the Lands Commission before attempting to enter unto the land;
5. Whether or not the Plaintiff is entitled to the reliefs claimed in his Statement of Claim.

In support of his Claim the Plaintiff pleaded that he is also known as Nii Quao Donkor II, a Traditional Chief and an Auctioneer by profession.

According to the Plaintiff he got to know the Defendant when she caused the arrest of his workers over the disputed land.

It is the case of the Plaintiff that the land together with a dilapidated building thereon belongs to the Sempe Stool and that the Stool has Judgment in respect of Lartebiokoshie lands.

Plaintiff states that sometime in 2015, the Stool leased the disputed property to him for which a document evidencing the lease was executed between the Sempe Chief, Nii Adote Otintor II and him.

The Plaintiff was thereafter granted possession and he placed his family members as caretakers on the premises.

Sometime in 2020, the Plaintiff in wanting to renovate the property sent his workers to the land only to be arrested by the Police due to a complaint lodged by the Defendant.

The Plaintiff says that the defunct U.T.C. occupied the plot till they vacated the place and handed over same to the Sempe Stool.

The Plaintiff says that the Defendant has not shown any evidence of ownership as a search conducted on the property showed that the Sempe Stool is the owner of the property in dispute.

The Plaintiff sates that the Defendant is a trespasser on the land and will not stop her trespassory activities until otherwise ordered by the Court.

Based on these facts Plaintiff Claims against the Defendant as follows:

- a. Declaration of land title to the land as described in the schedule.
- b. Recovery of Possession.
- c. Perpetual Injunction restraining the Defendant, her Agent(s) or any person(s) claiming through her from entering or causing anything to be brought onto the land or building on the land in dispute pending the final determination of the Suit.
- d. General Damages for Trespass.
- e. Cost including legal fees.

SCHEDULE

ALL THAT PIECE OR PARCEL OF LAND situate, lying and being at LARTEBIOKOSHIE covering an approximate area of 0.182 acres or hectares 0.073 and bounded on the North by Sempe Stool land measuring ninety seven feet more or less (97.9) and South by Sempe Stool land measuring ninety seven feet more or less (97.5) on the West by a proposed road measuring eighty four more or less (84.3) East by Sempe Stool land measuring seventy eight feet more or less (78.0) which said piece or parcel of land is more particularly delineated on the plan attached hereto and thereon shewn pink.

The Defendant resisted the claim of the Plaintiff by filing an Appearance and Defence.

Per her Amended Statement of Defence she pleaded as follows:

- “1. Save as hereinafter expressly admitted, Defendant denies each and every allegation of fact contained in the Statement of Claim as if same were set out herein in extenso and denied seriatim.
2. Save that Plaintiff is David Odamtten Abbey, Defendant denies paragraph 1 of the Statement of Claim and puts Plaintiff to strict proof of the averments therein.
3. Save that the Plaintiff’s workers were arrested over the land in dispute Defendant denies paragraph 2 of the Statement of Claim.
4. Defendant states that she had instructed her caretaker to inform the Plaintiff and his workmen that the property belonged to her family and as such should desist from trespassing and altering the property on the land in dispute, however Plaintiff refused and it was as a result of his continued trespass that Defendant made a complaint to the Police and caused his workmen to be arrested.
5. The Defendant states that paragraph 3 of the Plaintiff’s Statement of Claim is denied, and that prior to the commencement of the suit, the Defendant believed that the disputed property initially belonged to her grandfather, Patrick J.G. Wilkinson, and that he transferred his interests in the property to Stella Doku-Nartey, the Defendant’s grandmother, under a Deed dated 1st January 1957.
 - a. The Defendant further states that searches conducted at the Lands Commission have uncovered copies of conveyances and records that indicate that her grandmother was also the beneficiary of a lease by James Allotey Quaye dated 14th August 1953, and that James Allotey Quaye obtained his interest in the land under a Deed of Gift by Madam Adorkor

dated 3rd July 1953, and that Madam Adorkor obtained her interest in the land per a Deed of Gift by Nii Tetteh Kpeshie II, Mantse of the Sempe Stool, dated 20th March 1953.

- b. The Defendant states that the Defendant's grandmother, Stella Akle Wilkinson, was before her marriage to Patrick J.G. Wilkinson, known by her maiden name of Stella Doku-Nartey.
 - c. The Defendant states that her grandparents built the house that was demolished by the Plaintiff, and that they stayed there with their children, one of whom is Alex G. Wilkinson.
6. The Defendant states that her grandparents, after moving to a new residence, used the property for both residential and commercial purposes. Her grandfather's business partners and other executives who worked with him at Mobil Oil Gold Coast Limited, and some family members stayed in the property whenever they were conducting business in Accra.
 7. Defendant states in further response to paragraph 3 of the Statement of Claim that Patrick J.G. Wilkinson transferred his interest in the property to Stella Akle Wilkinson who lived in the property with her children.
 8. Stella Akle Wilkinson's Executors upon her demise, and by way of a Deed of Gift made on behalf of the children of Stella Akle Wilkinson, gifted the property to David Wilkinson, the Defendant's father.
 9. Defendant states that Hans Candreia was the tenant in the property during the time the property was gifted to David Wilkinson.

10. Defendant states further that her father died in 2014 and in his Will devised his interest in the property to the Defendant and her siblings; Setuchi Shireen Adama, Zara Sena Joan, Zinzile Patricia Dela and Selina Farida Selom.
11. Defendant denies paragraph 4 of the Statement of Claim and states that neither she nor any member of her family who have at some point owned the subject matter were a party to any such suit.
12. Defendant denies paragraph 5 of the Statement of Claim and puts the Plaintiff to strict proof of the averment stated therein.
13. Defendant states that the Sempe Stool, in 2015, was not the owner of the subject matter and therefore could not have validly executed a lease to the subject matter in favour of the Plaintiff.
14. Defendant further states that in 2015, her family had put Albert Ocansey & Company (the "Company") in occupation of the subject matter, and that if the Plaintiff had undertaken the most basic due diligence exercise before executing the purported lease to the subject matter, he would have been informed that the subject matter was occupied and that it was not the property of the Sempe Stool.
15. The Defendant vehemently denies paragraph 6 of the Statement of Claim and states that any such instrument seeking to deal with the interests or ownership of the subject matter is a product of the machinations of persons seeking to perpetrate a fraud and has no legal effect.
16. Defendant denies paragraphs 7 and 8 of the Plaintiff's Statement of Claim.
17. The Defendant states that before 2014 her stepmother, Marie Christine, renovated the property and their family resided in the property whenever they were in

Ghana. This was because they were constructing a property in Airport Hills and needed a place to stay in the interim.

18. The Defendant states in further response to paragraphs 7 and 8 of the Statement of Claim that since 2014 it was Jerry Kove (her caretaker) that had been taking care of the property on behalf of Marie Christine and her family.
19. Defendant states in further denial to paragraphs 7 and 8 that in March, 2015 the Company completed its office fitting works and moved into the property, and as such occupied the property from March, 2015 up until they relocated to Tesano at the end of September, 2020.
20. Defendant states further that neither she nor her caretaker had come into contact with the Plaintiff until September 11th, 2020 when Plaintiff caused his workmen to trespass on the property.
21. In further response to paragraphs 7 and 8, Defendant states that Michael Arthur and Ernest Adiei, both officers of the Company went to pack the Company's belongings from the property on September 11th 2020, and that it was only at that point that they had notice that Plaintiff's workmen had forcibly entered the property.
22. Defendant further states that the Plaintiff's workmen refused to allow Michael Arthur and Ernest Adiei access to the property and only yielded access upon intervention by some workers in a salon opposite the property (who knew Michael Arthur and Ernest Adiei from the period of occupation of the property by the Company and allowed Michael Arthur and Ernest Adiei to enter into the property to retrieve the Company's belongings.

23. Defendant denies paragraphs 9, 10 and 11 of the Plaintiff's Statement of Claim and puts the Plaintiff to strict proof of the averments therein.
24. Defendant totally denies the Plaintiff's assertion of ownership of the property and states that the property is owned by her and her siblings".

In proof of his Claim the Plaintiff filed a Witness Statement on 1st February, 2021.

Per his Witness Statement Plaintiff testified as follows:

- "1. My name is David Odamtten Abbey also known as Nii Quao Donkor II.
2. I live at House No. G 93/2 Asere Street, Asere-Accra.
3. I am an Auctioneer by Profession and a Traditional Chief of Accra.
4. I am the Plaintiff and owner of the land, the subject matter of this suit.
5. I acquired the land from Sempe Stool for valuable consideration.
6. An indenture evidencing the acquisition was executed between me and my grantor represented by Nii Adote Otintor II on 28th May, 2015. (Copy of the Document attached and marked as Exhibit A).
7. Before I purchased the land I conducted searches which confirmed my grantor as the owner of the land in dispute and no other person. (Copies of the searches is attached as Exhibit B).
8. The land together with the dilapidated building thereon belongs to the Sempe Stool.
9. The Sempe Stool had judgment in 1970 in respect of Lartebiokoshie lands including the property in dispute. (Copy of the Judgment attached and marked as Exhibit C).

10. Prior to the grant of the property to me, I was given the keys to the property by the Stool and had been in possession ever since.
11. Before the property was granted to me it was occupied by the then U.T.C.
12. Union Trading Company (U.T.C) occupied the land in dispute till they became defunct and vacated the place hence the property was recovered by Sempe Stool.
13. A search conducted on the property showed that the Sempe Stool is the owner of the property in dispute. (See Exhibit B above).
14. Sometime in 2020, I sent my workers to renovate the property only for them to be arrested by the Police due to a complaint by the Defendant.
15. The Defendant is a trespasser on the land and will not stop her trespassory activities until otherwise ordered by the Court hence this suit.”

The Defendant also testified as follows:

- “1. I am Shanthi Annan of No.8 Amilcar Cabral Road, Airport Accra I am a Strategy and Operations Consultant by profession. I am also one of five daughters of David Wilkinson, and I am the Defendant in this matter. The facts contained within this Witness Statement are within my personal knowledge.
2. The property in dispute (“the Property”) belonged to my late grandfather, P.J.G. Wilkinson which he acquired and occupied in 1957.
3. P.J.G. Wilkinson used the property as both a residential and commercial property. His business partners and other executives who worked with him at Mobil Oil Company Limited stayed in the property whenever they were conducting business in Accra.

4. My grandfather subsequently transferred his interest in the Property to Stella Akle Wilkinson who lived in the property with her children.
5. Stella Akle Wilkinson's executors upon her demise, by way of a Deed of Gift dated 8th July, 2005 gifted the property to David Wilkinson, who is my late father and was Stella Wilkinson's step-son. Find attached and marked as Exhibit A the Deed of Gift.
6. Hans Candreia was the tenant in the property during the time the Property was gifted to David Wilkinson by the estate of Stella Wilkinson. He was put in tenancy of the property by Stella Wilkinson.
7. In 2014, after my father's demise, his last Will and Testament was read. Per his Will, he devised his interest in the property to my siblings and I. My siblings are Setuchi Shireen Adama, Zara Sena Joan, Zinzile Patricia Dela and Selina Farida Selom.
8. Sometime in September, 2020 my step-mother and I were informed by Mr. Ernest Adjei, a staff of a former tenant of the property that the Plaintiff and his workmen had trespassed onto the Property.
9. My stepmother instructed Mr. Ernest Adjei to inform the Plaintiff and his workmen that the property belonged to my family and as such they should desist from trespassing and altering the property on the land in dispute, however Plaintiff refused and it was as a result of his continued trespass that I made a complaint to the Police and caused his workmen to be arrested.
10. Plaintiff and his workmen refused to heed to my caretaker's warning and instead removed the ceiling, beams and other parts of the existing structure on the land. Find attached and marked as Exhibits B1 and B2, pictures of the property.

11. My family has always owned the property in dispute and as such the Sempe Stool, in 2015, was not the owner of the subject matter and therefore could not have validly executed a lease to the subject matter in favour of the Plaintiff.
12. No member of my family or myself, who have at some point owned or been in possession of the subject matter, was a party to the suit with the Sempe Stool that the Plaintiff wholeheartedly relies on in support of his claim. Further, we have not been party to any other suit in which our ownership of the property has been challenged.
13. Prior to my father's demise in 2014, my stepmother, Marie-Christine Wilkinson and my father renovated the disputed property and they resided in the property whenever they were in Ghana. This was because they were constructing a property in Airport Hills and needed a place to stay in the interim.
14. On 29th March 2014, Jojo Ocansey, a former partner of Messrs. Albert Ocansey & Company and a friend of my father, commenced talks with my father concerning Messrs. Albert Ocansey & Company's intention to rent the Property for use as their office.
15. The initial conversations surrounding the tenancy were conducted via email between Jojo Ocansey and my father. Jojo Ocansey subsequently visited the property a few days later with my late father, when my late father visited Accra on vacation.
16. During the inspection of the property my father handed over the keys to the property to Jojo Ocansey as they had agreed on terms, and had intended to finalize the tenancy agreement the subsequent week.

17. My father unfortunately passed away on 17th May, 2014, a few days before the tenancy agreement could be finalized.
18. In 2015, a year after my father's demise. My stepmother concluded the rental agreement with Messrs. Albert Ocansey & Company who in March, 2015 completed its office fitting works and moved into the property, and as such occupied the property from March, 2015 up until they relocated to Tesano at the end of September, 2020.
19. Jerry Kove is the name of our caretaker that had been taking care of the property on behalf of our family since 2014. He is known by the shop attendants in the area and by the staff of Messrs. Albert Ocansey & Company as having been performing that role for us.
20. In September, 2020 my step mother, Marie-Christine Wilkinson, requested Messrs. Albert Ocansey & Company to surrender the keys to the property. This was because upon the demise of the main partner of Messrs. Albert Ocansey & Company, the firm were operating mainly from their Tesano branch office.
21. Michael Arthur and Ernest Adjei, both officers of the Messrs. Albert Ocansey & Company, went to pack their firm's remaining belongings from the property on September 11th, 2020. It was only at that point that the firm had notice that the Plaintiff's workmen had forcibly entered the property and were dealing with the building thereon.
22. Plaintiff's workmen refused to allow Michael Arthur and Ernest Adjei access to the property and only yielded access upon intervention by some workers in a salon opposite the property. The salon workers knew Michael Arthur and Ernest Adjei from the period of occupation of the property by the Messrs. Albert Ocansey &

Company. Michael Arthur and Ernest Adjei were thus able to enter into the property to retrieve their firm's belongings.

23. This is how my family became aware of the trespass and the claim of ownership by the Plaintiff to our property.
24. I state without any equivocation that the Plaintiff is not entitled to his claim and that the property belongs to my siblings and I".

THE LAW

In **Agbeko v. Standard Electric Co. [1978] 1 GLR 432 at 443**, his Lordship Kingsley-Nyinah JA declared that in civil cases, it is *"a vital principle of evidence, a common place of law, that proof lies upon the party who affirms and not upon the one who denies"*.

This principle was reiterated by his Lordship Mensah J in **Owusu v Tabiri & Another [1987-88] 1GLR 287** that *"It was a trite principle of law that he who asserted must prove and win on the strength of his own case"*.

The foundation of this principle is found in Sections 10, 11 and 12 of the Evidence Act, 1975 (NRCD 323).

Section 10 (1) of NRCD 323 provides as follows:

"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".

Sections 11(1) and (4) of NRCD 323 decree:

"Section 11: Burden of Producing Evidence Defined

- (1) *For the purposes of this Act, the burden of producing evidence means the obligation of a party to introduce sufficient evidence to avoid a ruling on the issue against that party.*
- (4) *In other circumstances the burden of producing evidence requires a party to produce sufficient evidence which on the totality of the evidence leads a reasonable mind to conclude that the existence of the fact was more probable than its non-existence."*

Section 12 of NRCD 323 states:

"Section 12: Proof by a Preponderance of the Probabilities

- (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."*

The burden of proof placed on a Plaintiff was considered in the case of **Amamoo v. Essibu [2014] 68 GMJ 55 CA** and at **page 83** the Court said:

"...and if the Defendant proffered no evidence, or the case offered by the Defendant when he gave evidence disclosed any weakness which tended to support the Plaintiff's case then the Plaintiff was entitled to rely on the weakness of the Defendant's case to strengthen his case"

The law relating to the standard of proof in all civil actions without exception was stated to be proof by preponderance of probabilities, having regard to Sections 11(4) and 12 of the Evidence Act, 1975 (NRDC 323). This means that the successful party must show that his claim is more probable than the other. See **Adwubeng v. Domfeh [1996-97] SCGLR 660**.

In an action for declaration of title to land, it is generally the Plaintiff who assumes the heavier burden to discharge to be victorious. It is equally instructive to note that under Section 14 of NRCD 323, the burden of producing evidence can shift from one party to the other in the course of trial. (See **Hydraform Estate Ltd v. Moi Ashong [2012] 49 GMJ 144 at 154**).

In **Majolagbe v Larbi [1959] GLR 190 at page, 192**, his Lordship Ollennu J (as he then was) stated his now famous principle on proof in law thus: -

“Proof in law is the establishment of facts by proper legal means; in other words, the establishment of an averment by admissible evidence. Where a party makes an averment, and his averment is denied, he is unlikely to be held by the Court to have sufficiently proved that averment by his merely going into the witness-box, and repeating the averment on oath, if he does not adduce that corroborative evidence which (if his averment be true) is certain to exist”.

The Court of Appeal in the case of **Zabrama v Segbedzi [1992] GLR 221 at 242** reiterated and expounded on the principle thus, *“A person does not prove a fact by merely going into the witness box and repeating on oath what he avers in his pleadings and by calling a witness to repeat the same on oath”.*

This principle was recently affirmed by the Supreme Court case of **T.K. Serbeh Co. Ltd v Mensah [2005-2006] SCGLR 341 at page 360** per his Lordship Dr. Date-Bah as thus: -

*“For, however credible a witness may be, his bare affirmation on oath or the repetition of his averments in the witness box cannot constitute proof. This is trite law: see **Majolagbe v Larbi [1959] GLR 190**, especially at page 192. This proposition is applicable to even matters whose proof does not require corroboration as a matter of law”.*

It is the position of the law, that in proving title, a party or his witness is not necessarily expected to state everything verbatim as if they are reciting a poem. There may be some differences or inconsistencies but they ought not to be about material facts or essential facts. In discussing the effects of minor inconsistencies in the case of a party and his witness(es) the Supreme Court espoused the law in the case of **Iddrisu Tifuuro Tatali v. Alhaji Saaka Yakubu [2018] 123 GMJ 72 at 106** when it stated as follows:

“In the case of **Effisah v. Ansah [2005-2006] SGLR 943 at 960**, the Supreme Court held as follows:

“...In the real world, evidence led at any trial which turns principally on issues of fact, and involving a fair number of witnesses, would not be entirely free from inconsistencies, conflicts or contradictions and the like.

In evaluating the evidence at a trial, the presence of such matters per se, should not justify as wholesale rejection of the evidence to which they might relate. Thus, in any given case, minor, immaterial, insignificant or non-critical inconsistencies must not be dwelt upon to deny justice to a party who has substantially discharged his or her burden of persuasion. Where inconsistencies or conflicts in critical mass of evidence or corroborative would be right to gloss over these inconsistencies”

However, the law emphasizes on the need for corroboration of the evidence of a party or a witness to make a case weightier. The position of the law is that “The well-established rule as espoused in a long line of cases including **Asante v. Bogyabi [1964] GLR 232, Osei Yaw v. Domfeh [1965] GLR 418 at 423 and Tsrifo v. Dua VIII [1959] GLR 63** is that where the evidence of a party on an issue in a suit is corroborated by witnesses of his opponent, whilst that of his opponent, on the same issue stands uncorroborated even by his own witnesses, a Court ought not to accept the uncorroborated version in preference to the corroborated one unless for some good and apparent reason, the Court finds the

corroborated version incredible, impossible or unacceptable". (See **Gbadago v Mohammed & Ors (2018) 118 GMJ 145 at 154**).

This brings the Court to the issues set down for determination.

I will deal with the issues together in this Judgment.

Throughout the trial the Plaintiff maintained that he acquired the subject matter in dispute from the Sempe Stool.

He tendered Exhibit A evidencing the transaction he entered into with the Stool.

Exhibit A is the Lease Agreement executed between the Sempe Stool and the Plaintiff. He also tendered Exhibit B which is a Search conducted at the Lands Commission which showed that the Sempe Stool had judgment in its favour in respect of the land in dispute. Also Exhibit C which is the Judgment was tendered. These pieces of evidence were unchallenged.

The Plaintiff also called two witnesses, one Michael Nii Anum Lartey, the substantive Stool Secretary of the Sempe Stool. He confirmed the grant to the Plaintiff and also confirmed the Judgment. His evidence was further that Union Trading Company built the house as a duty post for its staff and that the Union Trading Company stayed in the house until it became defunct and abandoned the property. The Stool therefore recovered possession after the Reconciliation Commission recommended that property seized or occupied forcefully revert to its owners.

The Plaintiff sought leave to subpoena a further witness from the Ablekuma Central Municipal Assembly. The Planning officer was in Court and gave evidence based on the Subpoena. He tendered as Exhibit D, a search from the Assembly showing that the name K. A. Gbedemah was the name registered in the Assembly as the owner of the property and that no changes have been made as to ownership.

In contrast the Defendant tendered a Deed of Gift between one Judy Ann Morris acting per her Attorney Rachel Wilkinson Inja and Mary Bulla as executors of the Estate of Stella Akle Wilkinson and one David Wilkinson.

The Defendant testified that the property was gifted to Stella Doku Nartey who is the same as Stella Akle Wilkinson.

It is instructive to know that all three site plans tendered by the Defendant were the same. The site indicates the location or description of the land/property being claimed by the Defendant. The Plaintiff indicated the subject land is distinct or different from the site plan of the land claimed by the Defendant. An issue therefore arises as to whether the land being claimed by the Plaintiff is the same as the one being claimed by the Defendant.

Indeed, when the Plaintiff was cross-examined by the Defendant's Counsel he insisted that the land he was claiming was Plot No. 4 as contained in Exhibit B. Exhibit B shows the lease granted to Union Trading Company by Komla Agbeli Gbedemah on 11th April, 1957.

It is my considered view that since the location of the land is in dispute there is the need for a superimposition of the respective site plans of the parties to establish the location of the land to enable the Court establish the location and identity of the subject matter in issue.

It is trite law that a Plaintiff in an action for declaration of title to land, recovery of possession and perpetual injunction has the duty of establishing by positive evidence (a) the identity of the land claimed, and (b) that the land claimed is the same as the subject matter of the Suit.

In **Anane v Donkor [1965] GLR 188, SC**, it was held, holding (1)

“A claim for declaration of title or an order for injunction must always fail, if the Plaintiff fails to establish positively the identity of the land claimed with the land the subject matter of his suit”.

In **Nyiklorkpo v Agbedetor [1987-88] 1 GLR 165, holding (3)** it was held:

“To succeed in an action for declaration of title to land, recovery of possession and for an injunction, the Plaintiff must establish by positive evidence, the identity and the limits of the land which he claimed...”

In the case of **Bedu v Agbi [1972] 2 GLR 226, CA**, it was also held:

“The onus was on the Plaintiffs to establish the exact boundaries of the land in dispute so that any judgment in their favour would be related to a defined area; or at least they should have proved isolated acts of ownership over the land. They failed to do either of these and the trial court was right in holding that they had not discharged the onus of proof”.

This therefore calls for an expert’s advice since the identity and location of the land in dispute is crucial to the determination of the instant action.

NATURE AND EFFECT OF EXPERT EVIDENCE

In producing a composite plan, the Survey Department of the Lands Commission provided expert evidence to the court. The court is not bound by such expert evidence; even though it often provide immense assistance to the Court.

In **Fenuku v John-Teye [2001-2002] SCGLR 985, at 990 holding b** it was held:

“The principle of law regarding expert evidence was that the judge need not accept any of the evidence offered. The judge was only to be assisted by such expert evidence to arrive at a conclusion of his own after examining the whole of the evidence before him. The expert evidence is only a guide to arrive at the conclusion.”

CONSEQUENCES OF ABSENCE OF A COMPOSITE PLAN WHERE THE PLAINTIFF RESISTED ITS PRODUCTION

Where the absence of a survey plan makes the identity of the land claimed in relation to the land in dispute uncertain, the Plaintiff who bore the primary burden of proving the identity of his land with the land claimed must bear the consequences of resisting or failing to ensure the preparation of a surveyor's plan.

It was accordingly held in **Yaa Kwesi v Arhin Davis & Abor [2007-2008] 1 SCGLR 580 at 586:**

"It was also part of the contention of the Plaintiff that the first Defendant, while tracing his root of title from Basia Aya, failed to show the identity, the extent and position of the land.

It is difficult to comprehend the force of this argument... by unwittingly resisting the application for the appointment of a surveyor and the making of a plan, the Plaintiff failed to acknowledge its effect to his own detriment. He failed to realize that as the Plaintiff claiming in a land litigation it was he who bore the primary responsibility or the burden of producing evidence on the issue of a surveyors plan to strengthen his case.

If this had been done, the entire land he claims as his own to the exclusion of the Defendants would have been clear on the evidence. We do not appreciate the legal or moral basis for the Plaintiff's attack against the Defendants on the issue of the extent of the disputed land."

In Yawson (substituted by) Tulasi & Anor v Mensah & Mensah [2011] 1 GLR 568 at 572, it was also held:

"As both parties were not contesting the issue of title from the evidence and the pleadings but the issue of boundary it is imperative that clear findings on this ought to have been made by the learned trial judge... but when a boundary dispute is in issue with an adjoining land, a court of law is bound to ascertain the exact boundaries of the parties.

This could be done if parties had met the surveyor who was enjoined by the order of the court to carry out the survey work."

This Court in the presence or absence of a surveyor's report (Composite Plan) is obliged to determine the identity of the subject land and use same to determine the reliefs before it.

In this regard the Court appointed a Surveyor to conduct the said exercise.

A copy of the surveyor's Report was tendered as Exhibits CE1 and CE2 by the Surveyor, CW1.

He was duly cross-examined by both Counsel. A look at the composite plan clearly shows that the property in dispute does not fall in the site plan of the Defendant. First of all, the land described in the documentation of the Defendant is edged Yellow while that of the Plaintiff is edged Magenta or Brown. Both parties showed or pointed the same boundaries to the Surveyor. The inference is clear that the Defendant showed land on the ground which did not correspond with the description on her site plan.

The third observation is that the demolished structure for Union Trading Company (U.T.C) does not fall in Defendant's site plan.

This was what CW1 told the Court:

"Q: So in fact the Defendant's Representative did not show you land which conformed to the Defendant's site plan.

A: Yes.

Q: The Defendant's site plan is bordered by the link Road and a proposed Road.

A: The Defendant submitted two plans. One has the link road and the proposed Road. And the other has only the link road.

Q: *So which one did you use for what you are testifying on.*

A: *The one which has the link Road.*

Q: *And the proposed Road.*

A: *Per the plan that I have there is no proposed road.*

A look at the site plans exhibited by the Defendant shows that the Defendant's land is bordered by the link road and the proposed road. This is the description of the land claimed by the Defendant.

"ALL THAT PIECE OR PARCEL of land situate lying and being at Link Road North East Kawli-Gonno in the Municipality of Accra aforesaid and bounded on the North by property now in the occupation of Gbedemah measuring 100 feet on the East by property now in the possession of Gbedemah measuring 78 feet on the South by a proposed Road measuring 100 feet and on the West by Link Road and measuring 78 feet be the same several dimensions a little more or less and containing an approximate area 0.179 of an acre and more particularly delineated and shown edged pink".

This description implies that all of her exhibits and her site plan is bordered on the Link Road and a proposed Road.

Further the CW1 confirmed that the Defendant's land falls partially on the land in dispute while the Plaintiff's land falls wholly on it. The witness stood by his work and defended it to the hilt. He was not shaken by cross-examination and finally confirmed that the demolished property fell on the land claimed by the Plaintiff and not the Defendant.

The Court's witness testified:

"Q: In preparation of the Exhibits CE1 and CE2 you had to visit the disputed property. Is that correct?"

A: Yes.

Q: *At the site I believe there was a demolished structure on the land in dispute. Is that correct?*

A: Yes.

Q: *And on the land were there any indications as to who the structure belongs to.*

A: *I was informed by the Plaintiff's representative that it belongs to UTC.*

Q: *You were also informed by the Defendant were you not that the demolished property did not belong to UTC. In fact, the property belongs to her grandfather. Is that correct?*

A: *No. I asked who the demolished property belongs to before the two parties and the Defendant's Representative told me that I should ask the Plaintiff's Representative.*

Q: *I put it to you are not being truthful to this Court.*

A: *I am very truthful.*

Q: *I further put it to you that you had no basis to present on the composite plan that the demolished property belongs to UTC.*

A: *I was informed and I was asked to enquire.*

Q: *I put it to you that apart from what the Plaintiff told you in respect of the demolished property you made no further enquiries about the ownership of the demolished property.*

A: *There was no one there to ask again. It was only the representatives of the parties who were there".*

The answers volunteered supra by CW1 clearly depicts that the land claimed by the Plaintiff is different from the land claimed by the Defendant.

There is further evidence before me that the Plaintiff called the Planning Officer from the Ablekuma Central Municipal Assembly as a witness.

He tendered Exhibit AB1, which shows that the subject house is registered in the name of K. A. Gbedemah.

Another Search Report tendered by the Plaintiff as Exhibit B shows that per a Lease dated 1st April 1958, Kombla Agbeli Gbedemah leased the subject property to UTC Ltd.

On the 31st July, 1970 Judgment was entered in favour of the Sempe Stool therefore making the Stool owners of the subject property.

A look at Exhibit A depicts the Plaintiff acquired the subject property from the current owners, the Sempe Stool.

In the circumstance I hold that the Plaintiff validly by acquired the subject land from the Sempe Stool.

In contrast the Defendant tendered a Deed of Gift between one Judy Ann Morris acting per her Attorney Rachel Wilkinson Inja and one Mary Bulla as Executors of the Estate of Stella Akle Wilkinson and one David Wilkinson.

The Defendant alleged that the property was gifted to Stella Doku Nartey who is the same as Stella Akle Wilkinson.

It is alleged that Stella Akle Wilkinson died testate. However, no Will or Probate was tendered to support this averment even though the Deed of Gift indicates so. The other issue is who is, or are the Executors of the Estates of Stella Akle Wilkinson. No explanation was offered for Judy Ann Morris of Australia having any capacity to make a Gift of Stella Akle Wilkinson's property which is an estate property to David Wilkinson.

It is also averred that David Wilkinson died testate but no Will, or Probate or any Vesting Assent was exhibited to support these assertions made in the Defendant's evidence. She offered no proof but came to repeat what was in her Witness Statement.

This brings the Court to the issue of whether or not the land in dispute and the building thereon belonged to the Defendant's grandfather PJG Wilkinson.

Throughout the trial the Defendant maintained that the land belonged to her grandparents, and that it was they who put up the building which was demolished by the Plaintiff. The Defendant in her Witness Statement vehemently refute the assertion by the Plaintiff that the Plaintiff has been in possession of the property since 2015.

Counsel for the Defendant, submits that during cross examination Plaintiff admitted that he had no idea as to who constructed the building and that he only assumed that it belonged to the Sempe Stool.

“Q: In paragraph 3 of your Statement of Claim you state that the land and the building thereon belong to the Sempe Stool. Is that not so?”

A: Yes.

Q: In respect of the building can you tell the Court the document you were shown that prove that the building was constructed or owned by the Sempe Stool.

A: When the land was given to me the building was on it. I therefore took it that the owners of the land were the owners of the building”.

Counsel continued that per paragraph 10 of the Witness Statement of Plaintiff's witness, PW1, Michael Nii Lartey Anum Tetteh (Secretary to the Sempe Stool), he contradicts the Plaintiff's assertion that the building was put up by the Sempe Stool as he states that the building was put up by Union Trading Company.

The Defendant has maintained that her family has been in possession of the property since the 1950's and that they had at different times in the past, given it out for rent and also used it for their personal use.

Counsel submits that in support of her assertion that the property was at times let out for rental, her witness, DW1, Ernest William Adjei, recounted in his Witness Statement the circumstances under which the Accounting Firm, which he still works with, Albert Ocansey & Company, rented the property from the Defendant's late father, David Wilkinson. He explained that as a result of the demise of David Wilkinson in or about 2014, the Tenancy Agreement was concluded with David Wilkinson's widow, Marie-Christine, in 2015, and the firm moved into the property in 2016. DW1 further explained that the firm ran part of its operations from the property till the death of Albert Ocansey on 6th June 2019.

Counsel submits that this is therefore means that it cannot be true that the Plaintiff was in possession of the property as at 2015.

Counsel further submits that DW1 showed that he had actual and first-hand knowledge of the subject matter and that he was a credible witness.

And that DW1, under cross-examination made references to instances where during their occupation, third parties had had dealings with the firm.

"Q: I am putting it to you that you have never had access to Mr. Gbedemah's property.

A: That is not true. In 2016 ICA (Institute of Chartered Accountants) Ghana they came to our office over there to monitor our operations which I can supply the date to the Court later on for the Court to make their own verification from the ICA office.

Q: *You have never operated from that office and that you are mistaking as to the identity of the property.*

A: *That is not true. We operated from that property, we opened our bank account at Barclays Bank Branch at north Kaneshie Industrial Area with that property address. We also had a contract with NHIA in 2017, and with the same address that we operated from. So we really operated from that said property.*

Q: *Tell us, what is the address of the property.*

A: *90 Workers Lane, Laterbiokoshie, Opposite Radio Gold. With some hairdressers in front of the facility which we even had a confrontation with them at some point in time.*

Q: *I am putting it to you that the property address is A697/2, Laterbiokoshie.*

A: *The number 90 Workers Lane was the address given to us that we were operating from, which is opposite Radio Gold”.*

According to Counsel, the law presumes that a person who exercises acts of ownership over property owns that property. Section 48 of the Evidence Act, 1975 (NRCD) 323 provides:

“ (1) *The things which a person possesses are presumed to be owned by that person.*

(2) *A person who exercises acts of ownership over property is presumed to be the owner of it”.*

It is salient to note that save telling the Court they rented the premises DW1 could not produce any documentary evidence when he was challenged during Cross Examination.

In this regard he testified as follows:

“Q: You did not attach any exhibit to your Witness Statement.

A: Yes.

Q: But you have made certain allegations in your Witness Statement.

A: Yes. Because there was no such exhibit to be attached.

Q: You have no proof of what you said in your Witness Statement.

A: The evidence that I have given is the truth.

Q: You see paragraph 2, you have not shown anything in proof of paragraph 2.

A: Yes. The arrangement of our occupation of that property was arranged between my senior partner the late Mr. Albert Jojo Ocansey with Mr. David Wilkinson also of blessed memory.

Q: In paragraphs 3 & 4 you talked about an arrangement for tenancy which was done by email, this is capable of truth by attaching these emails to your Witness Statement.

A: As I indicated earlier the arrangement was done between my late senior partner and Mr. David Wilkinson of which my senior partner indicated to me that there was such arrangements on going.

Q: This your senior partner you said he is dead.

A: Yes.

Q: You have no proof that he is dead by attaching a death certificate or obituary.

A: I can produce that later.

Q: You said David Wilkinson is dead you have nothing to show that he is dead.

A: I will arrange with the wife and get a copy for the Court.

Q: *In effect I am putting it to you that the evidence in your Witness Statement are all lies.*

A: *But I have indicated in the Witness Statement in the factual truth.*

Q: *The property the Plaintiff is claiming here was built by Mr. K. A. Gbedemah and leased to The Union Trading Company (UTC) and not Mr. Wilkinson property.*

A: *I do not know anything to that effect. What I know is that the late David Wilkinson according to my senior partner handed him the keys to the property which together with my late partner we had access to the property.*

Q: *Even if what you are saying is true which is denied, the property in dispute was one occupied by UTC from 1955.*

A: *What I know and I am testifying about that is that we had access to the said property from late David Wilkinson.*

Q: *I am putting it to you that you have never had access to Mr. Gbedemah's property.*

A: *That is not true. In 2016 ICA Ghana they came to our office over there to monitor our operations which I can supply the date to the Court later on for the Court to make their own verification from the ICA office.*

In the face of the denial of the claims by the Plaintiff I expected DW1 to have at least produce documentary proof of his claim but that was not done.

I say so because there is evidence before me per Exhibit B depicting that at a point the subject house was leased to the U.T.C. by one Gbedemah before the Sempe Stool took over same per a Judgment before granting same to the Plaintiff.

Counsel for the Defendant submits that though the Plaintiff obtained a lease to the subject land from the Sempe Stool, he failed to conduct a formal search at the Lands Commission

until 2021. And that he totally relied on the results of the Search to prove that the property is affected by a Judgment in favour of the Sempe Stool.

During Cross Examination Plaintiff testified:

Q: *You will agree with me that the Search indicates a number of transactions.*

A: *Yes.*

Q: *You want this Court to believe that despite the recorded transactions on the property you still went ahead to purchase the land. Not so?*

A: *My understanding is that the property changes hands according to the Search.*

Q: *So you still went ahead to purchase the land despite the transaction recorded on it by the Lands Commission.*

A: *Yes.*

Counsel for Defendant contends a party who proceeds to transact for a land which the results of a Search at the Lands Commission show is encumbered by various transactions, including “gifts” and “conveyance”, does so to his own detriment.

According to Counsel had the Plaintiff actually investigated the transactions, he would, as a reasonably-minded member of the community, not have proceeded to transact for a lease to the subject matter.

And that a diligent investigation would have informed him that the Sempe Stool, from whom he sought a lease to the subject matter, had as far back as 3rd July, 1953 absolutely gifted its rights and interests in the subject matter to Madam Adorkor.

Counsel further submits that it is also trite learning that a person cannot give what he does not have. This is captured by the maxim ‘nemo date quod non habet’. As such, Nii Adote Otintor II and the Sempe Stool could not have leased the subject matter to the

Plaintiff, because at the time of the purported lease, interest in the property had long since left the hands of the Sempe Stool.

See Tetteh and Anor. v Hayford (Substituted by Larbi and Decker) (2012) 1SCGLR 417.

“Again, as rightly found by the Court of Appeal, the Asere Stool having divested itself of its interest in the land in favour of the original Defendant long ago in 1974, per the nemo dat quod non habet maxim, had nothing (with regard to the divested land) to convey again, and so any purported sale of the already divested land to the plaintiff subsequently is null and void”.

It is of essence to note that per Exhibit B, the Sempe Stool took over the subject land per a Judgment of a Court of competent jurisdiction.

I do not have the power at this stage to question the Judgment in the face of any gift especially where the Judgment has not been set aside.

According to Plaintiff he acquired the subject land by relying on the said Judgment.

It is of essence to note that all that the Defendant relied upon affects a different land, totally different from Plaintiff's land.

In the circumstance I hold that per the evidence on record the Plaintiff was able to demonstrate that he is entitled to the reliefs he is seeking against the Defendant for which reason I accordingly enter Judgment for him as claimed per the Reliefs endorsed on the Writ of Summons.

Cost of GH¢30,000 against Defendants.

(SGD)

EMMANUEL AMO YARTEY (J)

COUNSEL: THOMAS HUGHES FOR PLAINTIFF

**EBOW BREW-HAMMOND FOR NANA ADWOA HACKMAN FOR
DEFENDANT**