

IN THE SUPERIOR COURT OF JUDICATURE IN THE HIGH COURT OF JUSTICE HELD IN TEMA ON TUESDAY THE 18TH DAY OF APRIL 2023 BEFORE HER LADYSHIP JUSTICE RITA AGYEMAN-BUDU (MRS)

Time: 9:39am

SUIT NO: LC/121/2020

BETTY RICHARDS

...

PLAINTIFF

VRS

1. SOLOMON MENSAH

...

DEFENDANTS

2. GEORGE T. QUARSHIE

PARTIES

Plaintiff - Present

Defendants- Absent

LEGAL REPRESENTATION

Mr. Joseph Addo with Mrs. Eunice Konadu for the Plaintiff – Present.

Mr. Edward Mettle Nunoo for the Defendants - Present

JUDGMENT

The Plaintiff herein Betty Richards instituted an action against the 1st and 2nd Defendants, **Mr.Solomon Mensah and Mr. George T. Quarshie** respectively as per her amended Writ of Summons and Statement of claim filed on 3rd of December, 2020 pursuant to this Court Order dated 20th November, 2020.

Plaintiff claims against the Defendants jointly and severally as follows:

- a) A declaration of title to all that piece or parcel of land situate, lying and being at Dawhenya in the Greater Accra Region of the Republic of Ghana bounded on the North-East by Lessor's land measuring 182.3 feet more or less, on the South-East by a proposed road measuring 140.1 feet more or less, on the South-West by Lessor's land measuring 202.0 feet more or less on the North-West by a proposed road measuring 141.2 feet more or less and more particularly described as containing an approximate area of 0.62 Acre or 0.25 Hectare.*
- b. Recovery of possession of relief (a).*
- c. Perpetual injunction against the Defendant, his agents, assigns, privies, workmen and all persons claiming through him from dealing with the land in whatsoever manner described.*
- d. Specific damages of GH¢4,100.00 being total cost of the damages caused to Plaintiff's properties on the land by the Defendant.*
- e. General damages for trespass*
- f. Cost including solicitor's fees assessed at the Ghana Bar Association's scale of fees.*

Plaintiff's case

Plaintiff is a Ghanaian resident in Canada. Plaintiff avers that she acquired the parcel of land measuring 0.62 acre or 0.25 hectare from the Osu-Ablade Wem Family of Prampram Traditional Area through its Head of Family, Abraham Nuer Nortey in December 2012.

Plaintiff avers that before acquiring the said land, she caused a Search to be conducted at the Lands Commission which results indicated that the land was not affected by any transaction. Thus upon acquiring the land she constructed a fence wall around the land, fixed a metal gate at the entrance and commenced a building project on same.

It is Plaintiff's case that she had remained in peaceful occupation and possession of the land until she returned home in early 2020 and found out that someone had damaged her metal gate and had started construction on a portion of her land, the subject matter of this suit.

Her enquiries revealed that it is the 1st Defendant herein who has caused damage to her property and was building on the land. Plaintiff's assessment of the damages caused to her property is valued at Four Thousand, One Hundred Ghana Cedis (GH¢4,100.00).

Plaintiff is therefore praying per the reliefs indorsed in the Amended Writ and Statement of Claim.

It must be noted that Plaintiff prior to filing this amended Writ of Summons, Plaintiff had on the 22nd April, 2020 filed in this Court, a Writ of Summons and Statement of Claim. This was accompanied by a Motion for Interlocutory Injunction.

Defendant's case

1st Defendant herein, Solomon Mensah filed an Entry of Appearance on 4th May 2020 and also a Statement of Defence on that same day. Counsel for and on behalf of 1st Defendant also filed a Joinder Application seeking to join the 2nd Defendant George T. Quarshie which Application was granted.

On 18th January, 2021, 1st and 2nd Defendants filed an amended Statement of Defence in response to Plaintiff's Amended Statement of Claim. 1st and 2nd Defendants aver that 1st Defendant is an employee of the Ghana Ports and Harbours Authority and the 2nd Defendant is also an ex-employee of Ghana Ports and Harbours Authority.

It is the contention of the 2nd Defendant that Plaintiff did not acquire any valid title or interest in the land the subject matter of dispute on account of the fact that per Exhibit 2 which is a Deed of Lease dated 17th day of May, 2005, he acquired a ninety-nine (99) years interest from Narh Mensah Head of Osu Wem Family and Dzasetse of Prampram Traditional area with the consent and concurrence of its principal members.

2nd Defendant further contends that as at 11th December, 2012 when Plaintiff's Grantor, the Osu Ablade Wem Family is purported to have granted Plaintiff an interest in the land, they granted nothing as they had earlier in time divested their interest in the land to the 2nd Defendant on 17th May, 2005.

Defendants further contend that Plaintiff was tricked by her alleged Grantor into parting with money under the guise of granting her land, as at the time there was a legal action pending at the **High Court Land Division, Tema; Suit No. E1/16/2013 entitled**

Assilevi Isaac Narh and 73 Ors.

Vrs.

- 1. Abed Nortey**
- 2. Agnes Norkai Sai**
- 3. Nelson Martey**

It is the contention of 2nd Defendant that Plaintiff has never been in possession and occupation of the land in dispute as 2nd Defendant after acquiring the land caused his Deed of Lease to be stamped, plotted and registered at Lands Commission, Accra as **LVB169/072 AR. 464/2002 Exhibit.**

2nd Defendant also contends that at the time Plaintiff was purportedly granted the land in dispute, there was a subsisting Interlocutory Injunction placed on the land pending

the determination of the suit in which Judgment dated 18th September, 2017 in respect of the disputed land went in his favour and which Judgment is still valid and subsisting as same has not been set aside.

It is the contention of Defendants that the said Judgment is binding on the Plaintiff and her Grantor. They are also contending that the Deed of Lease executed in favour of the Plaintiff dated 11th December, 2012, *Exhibit A* is fraudulent and mischievous as one of the Witnesses to the said transaction Nelson Martey was a party in the above mentioned Court case and knew the land was encumbered but same was resold or leased to Plaintiff.

Defendants contend that Plaintiff does not have any legal or equitable interest in the land in dispute and therefore is not entitled to her claim.

In her Reply to the Amended Statement of Defence, Plaintiff, Betty Richards denies having any knowledge of a pending legal action in respect of the disputed land as at the time she was granted the land. She moved into possession and occupation on the bare land when she acquired same in 2012 and is in the process of constructing a dwelling house on same and has remained in peaceful occupation until 1st Defendant demolished her fence wall in 2020.

Plaintiff avers in **Paragraph 7** of her reply to the Statement of defence thus;

“ Plaintiff says also in reply to Paragraph 8 of the Statement of Defence that the mere fact of having registered a land in your name does not confer absolute title on you as being the owner and 2nd Defendant’s registration is fraudulent as he cannot claim to have acquired the land in 2005 whereas his alleged registration bears a 2002 date, a clear case of fraud and or forgery”.

In **Paragraphs 8, 9 and 10** of the said reply to amended Statement of Defence Plaintiff avers as follows;

Paragraph 8

Plaintiff is not in a position to admit or deny the averments contained in Paragraph 9 of the Statement of Defence since she was never a party to any suit in relation to the land the subject matter of this suit.

Paragraph 9

Plaintiff is not in a position to admit averment in Paragraph 10 of the Statement of Defence but will say that if any such judgment existed, then it was fraudulently obtained as 2nd Defendant's alleged documents he purports to have registered if true was fraudulently registered and was used to fraudulently obtain the Judgment.

Paragraph 11

Plaintiff in reply to Paragraph 12 of the Statement of Defence will say that the Judgment of 18th September, 2017 has not been served on her to give her notice to so act and can therefore not be binding on her, more so when she was never a party to the suit and have never been made aware of any such pending suit to afford her the opportunity to join or decide otherwise.

Plaintiff maintains that she obtained a genuine lease from her Grantor and had no knowledge of any pending Court case at the time the land was granted to her till after she commenced the present action.

After close of pleadings, Application for directions which was filed by Plaintiff was heard and the issues raised for determination were as follows:

- a. Whether or not defendants are trespassers unto plaintiffs land the subject-matter of this suit.*
- b. Whether or not 2nd defendant's Judgment of 18th September, 2017 can operate as res judicata against the plaintiff who was not a party to the suit.*
- c. Whether or not 2nd defendant can rely on a document allegedly registered in his name three (3) clear years before he allegedly purchase the land the subject matter of this litigation.*
- d. Whether or not defendants can rely on the alleged fraudulent document as their title to the land.*
- e. Any other issue/s arising out of the pleadings.*

Defendants did not file any additional issues and so the issues filed by Plaintiff were set down for trial as Defendants did not object to the adoption of same.

Respective Counsel for parties were ordered to file Witness Statements, documents to be relied upon as well as their Pre-trial Check list in accordance with the provisions of (C.I 87) for and on behalf of parties and their Witnesses, which said Order was complied with.

Plaintiff, Betty Richards on 19th August 2021 filed her Witness Statement and attached *Exhibit A* which is an Indenture dated 11th December, 2012 between Abraham Nuer Nortey (Head of Osu Ablade Wem Family of Prampram Traditional Area of the Dangme West District and Betty Richards (Plaintiff herein).

Plaintiff also filed *Exhibit B series*, comprising *Exhibit B to Exhibit B15* which are photographs of the disputed land with structures on and also of the demolished fence wall around the land and the gate at the entrance which damage was purportedly caused by 1st Defendant.

On the same day, the 19th of March 2021, the Witness Statement of PW1 (Fred Edem Agbodo), PW2 (Alexander Adjei) and PW3 (Tetedzi Francis) were filed.

However, in respect of that of PW1 (Fred Edem Agbodo), Counsel for Plaintiff, in the course of trial prayed that they were withdrawing him from being a Witness so the said Witness Statement of PW1 was withdrawn.

On 24th March, 2021, the Witness Statement of 1st and 2nd Defendants; Solomon Mensah and George T. Quarshie respectively were filed.

Attached to the Witness Statement of 1st Defendant Mr. Solomon Mensah is (Exhibit 1) an official receipt dated 15th December, 2017 which is an acknowledgment of an amount of Forty Thousand Ghana Cedis (GH¢40,000.00) received from Mr. Solomon Mensah as payment for a plot of land situate at Dawhenya opposite Devtraco. The 2nd Defendant George T. Quarshie has appended his signature as the recipient and 1st Defendant who purportedly paid the money has also duly appended his signature.

Exhibit 2 is an Indenture dated 17th May, 2005 between Narh Mensah (Head of Osu Ablade Wem Family and Dzasetse of Prampram and George T. Quarshie (2nd Defendant herein with an attached Site Plan).

Exhibit 3 is a Police Enquiry Report dated 11th March 2021 captioned: ***“Police Enquiry Report on a case of trespassing on one plot of land at Avenue of Stars, Opposite Devtraco Estate Community 25. New Dawhenya”.***

Name of complainant is given as Solomon Mensah (1st Defendant and name of suspect is Betty Richards (Plaintiff).

Attached to 2nd Defendant George T. Quarshie’s Witness Statement is *Exhibit 4* which is a Judgment delivered on the 18th day of September, 2017 by **His Lordship Justice Alexander Osei Tutu Land Division, Tema Suit No. E1/16/2013**

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Vrs

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- 3. Nelson Martey**

In the said Judgment, (*Exhibit 4*) George T. Quarshie (2nd Defendant) was one of the Plaintiffs. His Lordship Justice Alexander Osei Tutu stated in the concluding part of his Judgment thus;

“I accordingly amend the reliefs of the Plaintiff in this case to include recovery of possession and grant same to the Plaintiffs herein who have had a declaration of title in their favour.

For the avoidance of doubt, the successful Plaintiffs in whose favour, title and damages are decreed are;

- 1. Francis Boakye Arthur (3rd Plaintiff)*
- 2. Timothy Asante (5th Plaintiff)*
- 3. Emmanuel Kobina Boadi (19th Plaintiff)*
- 4. Asamoah Otoo (20th Plaintiff)*
- 5. Eric Oduro (31st Plaintiff)*
- 6. Isaac Osei (37th Plaintiff)*
- 7. Kingsley Owusu Ankomah*
- 8. George Tetteh Quarshie (who is the 2nd Defendant in this action)*

Analysis

Plaintiff

Plaintiff relied on her Witness Statement and the Exhibits attached filed on the 19th of March 2021 as her evidence-in-chief. It is Plaintiff's case that in December 2012 she acquired a parcel of land from the Osu Ablade Wem Family of Prampram Traditional Area. The said land is described by Plaintiff as situate, lying and being at Dawhenya near Devtraco Court at Community 25 in the Greater Accra Region of the Republic of Ghana and bounded on the North East by her (Plaintiff's) Grantor's land measuring 182.3 feet more or less on the south east by a proposed road measuring 140.1 feet more or less. On the south west by her (Plaintiff's) Grantor's land measuring 202.0 feet more or less.

On the North -West by a proposed road measuring 141.2 feet more or less and more particularly described as containing an approximate area of 0.62 acre or 0.25 hectare.

On the issue of whether or not Defendants are trespassers onto Plaintiff's land, the subject matter of this suit;

Blacks Law Dictionary Ninth Edition defines trespass as;

"An unlawful act committed against the person or property of another especially wrongful entry on another's real property".

In the Case of **Nkyi Vrs. Kuma (1959) GLR 281 at 284** it was noted as;

"Thus were in an action for trespass, a Defendant...pleads ownership of the land (ie. that he has a better title to possession of the land than the Plaintiff has) the Plaintiff's title is put in issue and the Plaintiff cannot succeed unless he proves a right to possession which is superior to that of the Defendant. Consequently in an action for trespass, if it is proved that the Plaintiff has no

title at all to the land and that the Defendant entry is upon entry of the true owner, the Plaintiff's action must fail".

Also in the Case of Deliman Oil Company Limited Vrs. HFC Bank Limited (2016) 92 GMJ1 at page 8, the Court of Appeal decided at Holding 2 as follows:

"It is germane to submit that the concept of ownership of land embraces possession of title to land. An owner of land is a person who can show that he and those through whom he claims title have possessed the land for so long that there can be no reasonable probability of the existence of a superior adverse claim. Title is the means by which a person establishes right to land. A person's title indicates by what means he claims to be the owner of land. Title to land may take the form of possession or it may take the form of documents or series of documents. A good title is always documentary..."

In the instant case, the 1st Defendant pleads ownership of the land, his claim is that he has a better title than the Plaintiff. Thus Plaintiff must prove the right to possession as is the Principle in **Nkyi Vrs. Kuma (1959) GLR 281 at 284 (supra)**.

Plaintiff has tendered as "*Exhibit A*", A Copy of the Deed of Lease granted her by her Grantors.

Plaintiff contends that it is duly stamped as LVD 1877/2013. She has also tendered *Exhibit B Series* which she has labeled as Photographs of construction works she has carried on the land since 2012.

Counsel for Plaintiff refers the Court to the holding in **Nunekpeku & Ors. Vrs. Ametepe (1966) GLR249** which states:

"1) In an action the true nature of which was damages for trespass to land, it was sufficient for the Plaintiff to establish possession. It was only when there was specific or general denial of his title that the Plaintiff could not succeed without proving his title.

2) An action for recovery for possession was a wrong against possession and therefore the main fact which a Plaintiff must prove in order to succeed was possession. But whereas, in the instant case, the Defendant pleaded possession then it was incumbent upon the Plaintiff to prove that he was in possession at the time the Defendant entered upon the land and wrongfully dispossessed him of it".

In the instant case, Plaintiff contends that Defendants have trespassed on her land. I have analyzed all the evidence adduced in this matter and have also considered the issues raised in this suit as well as the reliefs sought. I find that the evidence of Defendants confirm ownership of the disputed land described in the schedule.

I hold that on all probabilities, Defendants have proved their claim and I enter Judgment in favour of the Defendants herein.

Defendants did not make any counterclaim but are contending that they are owners of the said land and that Plaintiff has no interest in same.

In respect of the reliefs sought by Plaintiff the decision I have arrived at are as follows;

- 1) Relief "a" which is Declaration of title of the disputed land fails.*
- 2) Relief "b" Recovery of possession of the said land is not granted.*
- 3) Relief "c" which is perpetual injunction against the Defendants, their agents, assigns, privies, workmen or persons claiming through them from dealing with the land in whatsoever manner described also fails.*

- 4) *Relief “d” which is specific of Four Thousand One Hundred Ghana Cedis (GH¢4,100.00) being total cost of the damages caused to Plaintiffs properties to the land by 1st Defendant also fails. This is because, I have already made a finding that the said property belongs to the Defendant.*
- 5) *Relief “e” General damages for trespass also fails.*
- 6) *Relief “f” Cost including Solicitor’s fees assessed at the Ghana Bar Association’s scale also fails.*

As I have already indicated, the Judgment of the High Court Land Division on the 18th of September, 2017 is still subsisting and in force and in the Judgment, 2nd Defendant, George T. Quarshie was granted recovery of possession of the said land which is not going to be varied by this Court. This Court will not vary the Orders therein in the said Judgment.

The said Judgment is binding on Plaintiff in as much as the said Judgment has not been set aside but it is still subsisting.

For emphasis, I will reproduce **Paragraph 2 of page 9** of the said Judgment which states as follows:

“Meanwhile the Defendants, their agents, land guards, assigns and workmen are perpetually restrained from interfering the aforementioned Plaintiff’s right and interest over the ¹respective portions of lands”.

In the case of **Agbeshie vrs Anor. (J4/35/2007) GHASC2 (11th February, 2009)** in this case, when issue of whether or not a previous judgment created any estoppel res judicatum, the Supreme Court opined that:

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“ It is well settled under the rule of estoppel that is a Court of competent jurisdiction has tried and disposed off a case the parties and privies themselves cannot thereafter bring an action on the same claim”.

Dahabie V.SA Turqui & Bros. (2001-2002) SCGLR 498 at 507. Gariba Dintie vrs. Luweri Kanton, SC dated and Asare vrs. Dony 1976 1 GLR at 478 per A2 Crabbe (Full Bench).

In the Garibi Dantie case supra, it was opined that the principle stated above is not dissimilar to the principle therein which is that the doctrine of estoppel does not operate against only the actual parties involved in the previous suit, as the Appeals seem to indicate, it goes beyond that to include privies which term include anyone who has a legal interest of privity in any action, matter or property by blood in representation, such as an executor or administrator of an intestate person etc.

I do not think the Five Thousand Ghana Cedis (Gh¢5,000.00) awarded as damages to each Plaintiff in the aforementioned Judgment is outrageous as an award.

The Plaintiffs in the aforementioned Judgment includes the 2nd Defendant herein and the Defendants in the said Judgment also includes the Grantor of the parties herein.

I award cost of Five Thousand Ghana Cedis (GH¢5,000.00) in favour of the Defendants jointly.

**H/L: RITA AGYEMAN-BUDU (MRS).
(JUSTICE OF THE HIGH COURT).**

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