IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT OF JUSTICE (LAND DIVISION) ACCRA HELD ON FRIDAY THE 2ND OF JUNE 2023 BEFORE HER LADYSHIP JUSTICE JENNIFER ANNE MYERS AHMED (MRS)

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SUIT NO. LD/0903/2020

KOJO WIH NKANSAH : PLAINTIFF

VRS

1. **GEORGE BONSU : DEFENDANTS**
2. **THE HEAD OF FAMILY**
   NII ANORKWEI FAMILY
3. **THE HEAD OF FAMILY**
   NII TUA FAMILY

J U D G M E N T

The plaintiff on the 23rd of June 2020 Issued a writ of summons and statement of claim out of the registry of this court praying for the following reliefs:

a. Declaration of title to the 0.895-acre land situate at Adjiriganor, Accra.
b. A declaration that the Defendants' entry to the land amounts to trespass.
c. Damages for trespass.
d. An order for the Defendants to demolish the unlawful structure they have commenced on the land and cart the debris away,or,in the alternative, an order

for the recovery from the Defendants of the total costs of such demolishing and carting away.

e. A declaration that any judgment or order obtained without notice to the Plaintiff is not enforceable against the Plaintiff and his land.
f. A declaration that the Defendants' interest in the land, if any, is extinguished and the Defendants are further estopped from asserting otherwise.
g. An order for the recovery of possession of the land from the Defendants.
h. An order for the recovery of the assessed value of the Plaintiff's building materials and heavy-duty mechanic tools damaged by the Defendants, and
i. Plaintiff's costs and legal fees for these proceedings on full recovery basis.

The 1ST defendant entered appearance on the22nd of July 2020 and thereafter filed a statement of defence on the 22nd of July 2020 in which he denied the plaintiff's claims and pleaded that the plaintiff's documents on which he relies ' is a forged document and/or one procured by fraud'.

PLAINTIFF'S CASE

The case of the Plaintiff as per his pleadings is that he purchased a parcel of land measuring 0.895 of an acre from the Ashong Mlitse family of Teshie in 1999 and has since been in effective and peaceful possession of the land until sometime in 2020 when the Defendants forcibly entered the land to unlawfully commence construction activities thereon, ejecting persons he had put on the land as proof of his possession and interest in it. Accordingly, the Plaintiff sued the Defendants for a declaration of title in his favour, damages for trespass against the Defendants amongst others as stated on the Plaintiff's writ.

DEFENDANT'S CASE

The case of the 1st Defendant on the other hand is that he obtained the disputed land from the 2nd and 3rd Defendants in 1991 and had put a caretaker on the land in 1991 before he travelled out of the jurisdiction. On his return, he realized that the land had been occupied by some mechanics and that was when he went to see his grantors and eventually evicted the mechanics from the land and entered possession.

The following were the issues which were set down for trial.

1. Whether or not the Defendants claim to the Plaintiff's property is statute barred
2. Whether or not the Plaintiff's title to the property is affected by the findings and decisions by his Lordship Justice Mr N.M.C Abodakpi in the suit titled: Nii Nmai Mensah [substituted by Simon Adjei Adjetey] v Seth Laryea Mensah & 3 others.(Suit No 1997/92), delivered on 27th July 2015
3. Whether or not the Plaintiff is entitled to his claims in this suit

Issue 1 -Whether or not the Defendants claim to the Plaintiff property is statute barred

It is the case of the Plaintiff that assuming without admitting that the Defendants had a valid claim to the land in dispute, the right to claim the said land has long lapsed and was thus statute barred under the Limitations Act,1975, NRCD 54. It is in this light that Plaintiff tendered Exhibit B, which is an indenture executed between himself and the Ashong Mlitse Family on the 15th of July 1999. The plaintiff's lawful attorney who testified in the stead of the plaintiff stated that the plaintiff had been been in effective possession of the land since he acquired it. Not only had he placed a container with building materials and heavy -duty equipment on the land but he had also given some mechanics a license to be on the land. The plaintiff had thus has been in peaceful occupation of the land until the Defendants' entry in May 2020 when they forcefully ejected the mechanics from the land.

Suffice to note that, none of the mechanics was brought in as a witness to support the assertion that the plaintiff put the mechanics on the land and that they were not merely squatters who came to the land on their own. In support of his assertion the plaintiff's lawful attorney tendered into evidence as exhibit C, a letter of eviction addressed to the mechanics to vacate the premises to enable the first Defendant engage in construction works on the disputed land.

It is not in controversy that this exhibit C was written by the Defendants and was addressed to the mechanics. Paragraph one of the letter stated as follows;

"It has come to the above family notice that the land you are operating on as a fitting shop is disturbing the person we have assigned our family land to is ready to work on the land but because of your activities on it, it is really causing problem to him"

During cross examination of the 1st Defendant's attorney on 15th March 2022, this is what ensued;

'Q: You were one of those who came to the land in dispute in May 2020 to deliver Exhibit C to the mechanics who were on that land. I am putting that to you.

A: I am the one who signed Exhibit C but I was not the one who delivered it. At the time, the 1st Defendant wanted to undertake some developments on the bare land but there were mechanics and other vehicles which had been parked on the land and so some members of the family with whom I work there were the ones I sent to deliver Exhibit C to the mechanics.'

It is the plaintiff's case as per his pleadings and the evidence of his lawful attorney that he placed the mechanics on the land and they in turn had informed him of the activities and the actions of the Defendants. It is the maxim that he who asserts must prove so the plaintiff in support of his assertion that he had been in occupation of the land tendered as exhibit C the letter given to the mechanics by the defendants. The fact that Plaintiff tendered exhibit C, which was addressed and given to the mechanics and not the Plaintiff gives a reasonable probability in favour of Plaintiff that probably he put them on the land and that is why he obtained the letter given to the mechanics,

his licensees. This letter is tenuous at best but however tenuous it may be, the 1st defendant was unable to contradict the assertions of the plaintiff that even though he had not been the intended recipient of the letter, he had received it due to the fact that he was the one who had permitted the mechanics to occupy the land.

It is also the case of the Plaintiff that he deposited building materials and heavy duty machines on the land and although actual pictures of the building materials or of the heavy duty machines were not tendered in evidence, there were several pictures tendered as exhibit D series showing debris from destruction of what appears to be concrete on the disputed land.

In the circumstance the burden of proof by virtue of section 14 of the Evidence Act 1975, NRCD 323 shifted from the plaintiff to the defendants to prove that they had been in possession of the land and not the plaintiff. It is the case of the Defendant that he obtained the land from the Nii Anorkwei and Nii Tua families in 1991 and afterwards placed a caretaker on the land but he returned to the land some years later to meet the mechanics on the land. Upon seeing the mechanics, he drew the attention of his grantors who subsequently wrote a letter to the mechanics and consequently ejected them from there. According to the 1st defendant's lawful attorney, although the 1st defendant put a caretaker on the land, he was nowhere to be found when he returned from his sojourn abroad. Suffice to say that the Defendants entered the land in 2020 when he actually obtained it in 1991 which would mean that he had been absent on the land for more than 20 years and obviously, much more than the period of limitation as given by the Limitations Act, NRCD 54.

The 1st Defendant's lawful attorney at paragraphs 9 and 10 of his witness statement deposed as follows:

'9. 1st Defendant upon acquisition of the land took possession of same by depositing two trips of sand and a trip of gravel on the land. Subsequently 1st Defendant travelled abroad, however

the caretaker by name Atta Kofi was on the land but when he finally returned the caretaker to his surprise had deserted the land and was nowhere to be found.

10. 1st Defendant rather found some mechanics on the land but they refused to mention who put them on the land. 1st Defendant then confronted his grantors to find out whether they put the mechanics on the land. His grantors claimed they had no knowledge of their presence on the land and they insisted that they had not sold the land to anybody either. A portion of the land had also been encroached with completed buildings.

It is worthy to note that the 1st defendant's grantor wrote the letter to the mechanics only in 2020 which therefore supposes that in fact Defendants re-entered the land in 2020. Also, save that indeed the 1st defendant observed the activities of the mechanics on the land and subsequently had his grantors write them, the defendants did not provide any document or evidence showing that they were in possession or have previously been in possession. Not only was there no evidence of the supposed sand and gravels that he deposited on the land but there was no evidence adduced to support the assertion that there was even a caretaker previously on the land. All assertions made in respect of possession by the Defendants are absolutely naked without the slightest proof. Having held that the burden of proof with reference to possession shifted from the Plaintiff to the Defendants, the 1st defendant in particular ought to have also have adduced sufficient evidence to prove his possession of the land in dispute before the plaintiff but alas he was found wanting in that regard . As at this point, the Defendants most especially the 1st defendant have not proven, even on the slightest probability that they have ever been in possession of the disputed land.

From the evidence on record, the plaintiff proffered no other evidence of his supposed long possession of the subject land other than exhibit C, the letter written to the mechanics. There was no evidence of any container or heavy duty equipment he had had placed on the land. The pictures which were tendered by the plaintiff's lawful attorney showed debris on land from parts of a wall pulled down and did not show

any heavy duty equipment as alleged. If indeed the plaintiff had placed heavy duty equipment on the land as alleged who moved them from the land and where were they placed? What also happened to the container on the land? Similarly, the only link that the plaintiff has been able to show to this court of his claim of having been in possession of the land is the letter given to the mechanics on the land by the defendants. None of these mechanics were even produced as a witness to confirm that indeed it was the plaintiff who had placed them on the land to occupy same as his licensees. As stated previously, the only evidence of possession he has is tenuous at best and does not on the balance of the probabilities prove that he had been in possession of the land in dispute for all this while as he claims. Simply put, the evidence is rather scanty. Accordingly from evidence on the record, it can be concluded that on the balance of the probabilities, neither one of the parties has been able to prove that they have been in effective possession on the disputed land for a very long time as claimed by them.

By section 10 of Limitations Act, NRCD 54,

"No action shall be brought to recover any 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 some person through whom he claims, to that person."

Relating this to the foregoing, this court is of the view that the 1st defendant's claim to the land in dispute is statute barred as indeed if he had purchased same in 1991, there was no evidence adduced that he was ever in possession of the said land warranting him in 2020 taking steps to take possession of it from the plaintiff.

ISSUE 2- Whether or not the Plaintiff's title to the property is affected by the findings and decisions by his Lordship Justice Mr N.M.C Abodakpi in the suit titled: Nii Nmai Mensah [substituted by Simon Adjei Adjetey] v Seth Laryea Mensah & 3 others.(Suit No 1997/92), delivered on 27th July 2015

The 1st Defendant in support of his case tendered into evidence as exhibit 3, a judgment of Justice N.M.C Abodakpi to say that judgement was given in favour of his grantors who happen to be the 2nd and 3rd defendants. It is interesting to note that the Defendants action is basically hooked to this judgment and in actuality the thrust of the 1st defendant's case is that judgment in the suit was given in their favour and that this judgment of Abodakpi J is what forms the basis of their right to enter into the land which is already in the possession of the Plaintiff. Basically the defence of the 1st defendant is this judgment of Abodakpi J in suit no. 1997/92 titled **Nii Nmai Mensah(substituted by Simon Adjei Adjetey) v 1. Seth Laryeah Mensah(substituted by Emmanuel Afotey Tetteh) 2.Okley Mensah 3. Afotey alias J.J 4. Narh Odai and Samuel Adjei Mensah as co-defendant**. The plaintiff in that suit, Nii Nmai Mensah was the head of family and lawful representative of the Nii Anorkwi and Nii Tuaka families of Otanor which families happen to be the grantors of the 1st defendant as well as the 2nd and 3rd defendants herein. The 1st defendant was the head of the Nii Ashong Militse family and the grantor of the plaintiff herein. Having read the entire judgment, no where did the Honourable Judge declare legal title of the disputed land in the instant suit for the Plaintiff in that suit , who is the grantor of the Defendants herein. The Plaintiff in that suit, specifically, **Nii Nmai Mensah [substituted by Simon Adjei Adjetey] v Seth Laryea Mensah & 3 others.(Suit No 1997/92)** and Defendants herein sought a relief for a declaration of title to a parcel of land covering an area of 286.41 acres to be made in their favour. There is no proof that the land in dispute herein falls within that land they were claiming title to. It is pertinent to state that such a relief as sought by Plaintiff was dismissed entirely by the Honorable Judge. Paragraph 3 of the orders of the court states clearly that

3. ***" The Plaintiff's claim for title as endorsed on the writ is accordingly dismissed."***

It is therefore very surprising that the Defendants attach so much energy to Exhibit 3 where the declaration for title was dismissed clearly. In fact, cost was even awarded against the Plaintiff in that suit who are the Defendants herein. I will here reproduce part of the orders of my brother Abodakpi relevant to this case which were as follows:

'1(a) This court enters judgment in favour of co-defendant on relief one(1)-i.e declaration of title to land described in their counter-claim but with a proviso, that plaintiff is entitled to possessory title of the land in which they and people claiming through them, have had possession of, for many decades, as found in the trial.

(b) Consequently, a superimposition of EXHIBIT 'A' and EXHIBIT '5' shall be done and plaintiff shall take possessory title of their land and co-defendant shall be entitled to title over the rest of the land.

(c) The superimposition shall be done within 21 days upon receipts of the certified true copy of this judgment. And a judgment plan shall be drawn…'

"Plaintiff is entitled to possessory title of the land in which they and their people claiming through them have had possession of, for many decades as found in this trial"

Firstly, it is worthy to note that the Plaintiff therein and the Defendants herein were held to be entitled to possessory rights of some parts of a larger area of land which measured 748.39 acres, title of which was declared to be in favour of the family of the co-defendant in that suit, the Nii Akwra Boye-Doku family of Teshie. There is no evidence that the subject matter in dispute was originally in the possession of the 2nd and 3rd Defendants herein or that it fell within the area of land the court declared them as having possessory rights to . Again, the Defendants herein did not tender any evidence to prove their long possession particularly over the land subject matter of this instant dispute. The fact that judgment was given that the Defendant has right to possessory part of some part does not mean that they can enter every land within the area to claim possession without proof of previous possession as indicated by the court. Claims of possession must be supported by sufficient evidence. Unfortunately,

in this instant suit, not one evidence was led to prove that the subject matter in dispute was in the possession of the Defendants or even that the disputed land in this instant suit includes lands that the judgment tendered as Exhibit 3 gave Defendants possessory rights over.

Again the judgment plan that was supposed to have been drawn up pursuant to the judgment of Abodakpi J was never produced before this court and thus there was no judgment plan indicating precisely which part of the larger land belonging to the Nii Akwra Boye-Doku family the 2nd and 3rd defendants' families exercised possessory rights over.

Accordingly, the Court cannot be satisfied, on the least probability that the disputed land in this instant suit forms part of the land which exhibit 3 relates to or over which Abodakpi J granted the defendants herein possessory rights over. There is simply a dearth of evidence to hold otherwise.

In spite of the above findings, it is important to address reliefs as endorsed on Plaintiff's writ for even though the court finds that the land in dispute does not belong to the defendants, it does not automatically confer title on the plaintiff herein . One of the claims as per the endorsment on the writ is for a declaration of title in favour of the Plaintiff and this means that the burden of proof in this case lies on the Plaintiff to provide sufficient evidence to prove that indeed the disputed property, subject matter of this suit is his property. Per the provisions of the Evidence Act the plaintiff is enjoined to lead sufficient evidence to prove his title to the land and reference is made specifically here to section 11 (1) of the Evidence Act which states that *"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."*

It is undisputed that the Plaintiff has the burden of proof to prove that he has a valid claim to the land and he must therefore be able to establish the capacity of his grantor to grant him the land which is the subject matter of the dispute and also to lead clear

evidence as to the identity of the land. In addition, the Plaintiff must also prove that his grantor's right to convey the land is without defect. In other words, the Plaintiff must prove that his grantor has capacity and legal title to pass on such a title bearing in mind the fact that he has not made any claim of being an innocent purchaser for value without notice. As stated in the case of ***Agyeman (Substituted By) Banahene V. Anane [2013-2014}1SCGLR 241*** a party whose title is derivative must show that his predecessor had good title. Again in **Awuku v Tetteh**[2011] SCGLR 366 Ansah JSC stated as follows:

'We believe we state the law correctly that where the appellant's title was derivative, he ought to demonstrate that the predecessor-in-title held a valid title for if the foundation was tainted, the superstructure was equally tainted.'

With the exception of the plaintiff's deed of conveyance, no evidence was adduced throughout the trial by the plaintiff's lawful attorney to prove the title of the plaintiff's grantor, the Ashong Mlitse family. Per the defendant's exhibit 3, the grantor of the plaintiff herein was the 1st defendant in suit no. 1997/96 and no declaration of title was made by the court in favour of the Ashong Militse family. In fact the court made findings which showed that whatever claims the Ashong Militse family had made to the land in dispute was unmerited as they had no right of title to the land the subject matter of that dispute even though from the evidence they appeared to have been making grants of the land to others. Although declaration of title was generally not given in favour of the plaintiff therein who is the 1st Defendant's grantor as well as the 2nd and 3rd defendants herein, judgment was also not given in favour of the plaintiff's grantor who was the 1st defendant therein. The Plaintiff therefore still ought to have led evidence to prove that his grantor had a valid title to the land and further that the land he lays claim to is not part of the land declared by Abodakpi J to belong to the Nii Akwra Boye-Doku family of Teshie. Unfortunately, the court will not be able to hold that indeed the Plaintiff's grantor had right to alienate the land in dispute

to the Plaintiff as there is no evidence on record to validate the alienation of the disputed land to the Plaintiff.

The court's decision is reinforced by the 1st defendant's exhibit 4, which is a writ of summons and statement of claim commenced in the high court sitting at Tema in suit no. LC/006/2021 by a company known as Winchester Empire Company Limited against the plaintiff and 1st defendant herein and two others who are described as trespassers. The plaintiff in that suit has sued the parties herein for title to land measuring 0.932 acre and traces its root of title to the victorious party in suit no. 1997/92 claiming that the land in dispute therein and also herein, forms part of the 748.39 acres declared in favour of its grantors per the judgment of Abodakpi J on the 27th of July 2015. It is rather unfortunate that the attention of this court was drawn rather late in the day to that suit for it would have been prudent to have consolidated the two cases for a final determination of all issues in relation to the land in dispute.

Again, identity of the land is crucial in determining whether or not a party is entitled to a declaration of title. It is trite law that a Plaintiff is required by law to lead clear evidence to establish the identity of the land he lays claim to. Thus in ***Nii Tachie Amoah VI v. Nii Armah Okaine & Others;*** Civil Appeal No. J4/59/2013, of 15th January 2014, the court stated that *"the established principle of law requires the plaintiff to lead clear evidence as to the identity of the land claimed with the land the subject matter of his suit."* In the earlier case of ***Anane v Donkor (1965) GLR 188 at page 192*** Ollenu JSC stated thus;

"Where a court grants declaration of title to land or makes an order for injunction in respect of land, the land the subject of that declaration should be clearly identified so that an order for possession can be executed without difficulty, and also if the order for injunction is violated, the person in contempt can be punished. If the boundaries of such land are not clearly established, a judgment or order of the court will be in vain. Again, a judgment for declaration of title to land should operate as res judicata to prevent the parties re-litigating the same issues in respect of the identical subject matter, but it cannot so operate unless the subject matter thereof is clearly identified. For these reasons 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 to which he claims title with the land the subject matter of the suit."

Consequently, the general principle as established is that a claim for a declaration of title or an order for injunction must fail where the Plaintiff fails to lead positive evidence to identify the land which is the subject matter of his suit. Even though both counsel for the parties during the directions stage stated that there was no dispute about the identity of the land and thus there was no need for the court to order for the preparation of a composite site plan, it is apparent from the evidence on record that the identity of the land in dispute is in doubt. This is due to the fact that the land claimed by the Plaintiff is disputed and accordingly the general principle that the Plaintiff must lead clear evidence to identify the land still stands. During cross-examination of the Plaintiff's Attorney, this is what ensued on the 8th of November 2021:

> *'Q: Per Exhibit B the land that was allegedly granted to the Plaintiff by Ashong Mlitse Family covered an area of 0.46 acre of an acre.*
>
> *A: Yes, my Lord. I believe this could be a typographical error because we wanted to do a title on that same land and so we presented the document to the lands commission and they went to the site to do a cadastral. It was realized that the coordinates were accurate but the acreage was not and so they prepared a new site plan to correct the mistake that was on the old site plan.'*

Again on the 17th February 2022 the following question and answer exchange took place during the continuation of the cross-examination of the plaintiff's lawful attorney;

> *'Q: When you say the coordinates were accurate but acreage was not, what do you mean?*
>
> *A: By that I mean the angles and corners of the site was accurate but the measurement stated- on the site plan was what was mistakenly written as 0.46 on the old site plan.*

Q: You will agree with me that it is the site plan as contained in the indenture that is used by the lands commission to register the land.

A Yes my lord, I do agree but the land as we speak is static and the land that was given to us by the family was exactly what was shown on the site plan. And so far being in possession for over 20 years, without any member of a family as in the size of the land being occupied clearly proves that there was no question as to the measurement of the land from the family.

Q: The site plan as contained in the indenture i.e exhibit B is not the one that was prepared for you by your grantor.

A: Yes my lord that is right but as I earlier on mentioned when the title was applied for the surveyors identified the anomaly and prepared a new site plan to indicate the right acreage of land.

According to him, it was the plaintiff who had taken the surveyors to the land as he was within the jurisdiction at the time. Thereafter the following question and answer exchange occurred;

' Q: I suggest to you that the Plaintiff showed a parcel of land which is different in size to the land as allegedly granted to him per Exhibit B.

A: The land in question with the old site plan had dimensions to the left and to the right which was indicated in red on the site plan. And the size of the land indicated in red was exactly 0.895 of an acre as has been shown on the new site plan and that was why I mentioned that the 0.46 was an error made by the initial surveyors.

Q: I suggest to you that the land the Plaintiff's grantor intended to grant to him is the one described in Exhibit B. as a measuring 100 feet on the North East, 200 feet on the South East, 100 feet on the South West and 200 feet on the North West, containing an approximate area of 0.46 of an acre.

A: Yes my Lord. I think I will not be in the position to know the measurements of the land as has been described in the indenture because I am not a technical person in this field.'

Clearly there was a discrepancy with regards to the identity of the land, particularly the land as described on the indenture and the site plan of the plaintiff and the plaintiff's lawful attorney was unable to proffer any reasonable explanation for the glaring difference other than to say that the 0.46 of an acre in the indenture was probably a typographical error. The plaintiff's original site plan given him by his grantors was never produced and an inference can be made that perhaps the land as shown by the plaintiff to the surveyors on the ground was more than what his grantors purportedly gave to him. His deed of conveyance and his site plan not being in tandem it can be said that the land the plaintiff is laying claim to has not properly been identified. In the absence of any other evidence to prove the identity of the disputed land with certainty, it can be held that the burden of proof on the Plaintiff to identify the disputed land has not been discharged.

Having held previously also that the Plaintiff have failed to prove that their grantor, had valid legal title to alienate the land, subject matter of this instant suit, the Plaintiff cannot be entitled to an absolute declaration of title.

In conclusion, none of the parties herein have any claim of title to the disputed land and neither one of them has been able to establish on the preponderance of the probabilities any such claim.

In view of the suit pending before the High Court in Tema and in view of the fact that no survey work was carried out to determine whether or not the land in dispute falls within the land which the defendant's grantors were deemed to have possessory rights on in suit no. 1997/92 titled Nii Nmai Mensah (Substituted by Amon Adjei Adjetey) vrs. Seth Laryea Mensah & 4 Ors, this court will make no order granting any of the parties herein possessory rights over the land in dispute.

No order as to cost.

SGD

MRS. JENNIFER ANNE MYERS AHMED

JUSTICE OF THE HIGH COURT

2/06/2023