

IN THE SUPERIOR COURT OF JUDICATURE. IN THE HIGH COURT  
OF JUSTICE (COMMERCIAL DIVISION) ACCRA HELD ON  
WEDNESDAY THE 8<sup>TH</sup> DAY OF MARCH, 2023 BEFORE HER  
LADYSHIP JUSTICE AKUA SARPOMAA AMOAH (MRS.)

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SUIT NO. CM/MISC/0393/2021

EXPORT AND IMPORT BANK OF THE  
UNITED STATES OF AMERICA - PLAINTIFF

VRS

1. TATOP COMPANY LTD - 1<sup>ST</sup> DEFENDANT  
2. KWAKU TABIRI - 2<sup>ND</sup> DEFENDANT  
3. VIVIAN TABIRI - 3<sup>RD</sup> DEFENDANT  
4. YAW TABIRI - 4<sup>TH</sup> DEFENDANT

NII BOAFO DANYINA – NSE 1 - CLAIMANT

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PARTIES: - ABSENT

COUNSEL: DANIEL MARTEY HOLDING BRIEF FOR ESINAM  
BAFFOUR-ACHEMFUOR – PRESENT

**KOFI SUNU HOLDING BRIEF FOR G.H. QUIST  
FOR CLAIMANT – PRESENT**

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**J U D G M E N T**

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The facts of the present suit are that the Plaintiff/Judgement-Creditor/Defendant herein (Judgement Creditor) sued and obtained Judgment against Tatop Company Limited, the 1<sup>st</sup> Defendant/Judgement Debtor (1<sup>st</sup> Judgement Debtor) in *Suit No. BFS/143/2015*.

In the course of executing the said Judgment, the Judgement Creditor attached an Industrial Property known as Tatop (The Property) located at Sampaman at Weija in the Greater Accra Region and belonging to the Judgement- Debtor.

Following the attachment of the Property by the Judgement Creditor, the Claimant/Plaintiff (Claimant) who describes himself as the Dzaasetse and acting Weija Mantse, filed a Notice of Claim in respect of the Property.

The case of the Claimant is that the land on which the Property is situate belongs to the Weija Stool and not the 1<sup>st</sup> Judgement Debtor. The said land, according to Claimant, was trespassed upon by the 1<sup>st</sup> Judgment-Debtor who proceeded to construct an Industrial factory on the disputed land.

Upon realizing the unlawful presence of the Judgment-Debtor on the land, Claimant says he commenced a suit in the Land Division of this Court in *Suit Number LD/0785/2018* for declaration of title to the said piece of land among other reliefs.

In support of his assertions, Claimant tendered evidence of Suit *LD/0785/2018* as *Exhibit A*. According to Claimant, the said suit is currently pending before the Land Division of this Court and is yet to be determined. Also tendered was *Exhibit B*, a search which is said to disclose that the land in question belongs to the Weija Stool. *Exhibits C* and *D* were also tendered to prove that following litigation with the Sempe Stool over the land in dispute, the Sempe stool surrendered all its claims to the said land to the Weija Stool in 1996 as a result of an out of Court settlement between the said Parties.

Claimant contends that the failure of the 1<sup>st</sup> Judgment-Debtor to contest *Suits Numbered LD/ 0785/2018* and *BFS /143/2015* is ample proof of the 1<sup>st</sup> Judgement Debtor's knowledge of the defect in its title to the Property.

He maintains that the 1<sup>st</sup> Judgement-Debtor unlike Claimant stands to lose nothing if the sale embarked upon by the Judgment Creditor is allowed to proceed as the Property does not belong to the 1<sup>st</sup> Judgment- Debtor.

The Judgment-Creditor resists the Claimant's claim. Testifying through the Clerk of its Counsel, Thywill Dotse, the Judgement/Creditor tendered

*Exhibits 1, 2, 3, 4 and 5* in proof of due process followed which culminated in the attachment of the Property.

The Judgement Creditor maintains that the 1<sup>st</sup> Judgement Debtor has been in possession of and conducted its business on the land in dispute for well over 15 years and has enjoyed exclusive and uninterrupted possession of same throughout the period.

The Judgement Creditor further resists the Claimant's claim on the strength of *Exhibit 6*, a Search Report dated the 28<sup>th</sup> of June, 2021, which reveals that the land in dispute was compulsorily acquired by the State for an Irrigation Development Project in 1979.

Now, the instructive Judgement of *Abban J* (as he then was) in the case of *SALAMI v SHARANI [1973] 2 GLR 364* sheds light on the purpose of Interpleader proceedings as follows;

*“Interpleader proceedings should not be confused with an ordinary action. The most important object of these interpleader proceedings is to enable the deputy sheriff who has seized the property and is in possession now thereof, to obtain relief and to get a decision of the court as to the person to whom he has to release the property. The claims in respect of the property seized are made against the deputy sheriff and he is in the technical sense, the defendant since the rival claims are being made against him. So in a way the interpleader proceedings are for the benefit of the deputy sheriff inasmuch as the decision of the court in the proceedings ...would give him*

*relief and enable him to know the right person to whom he should release the property"*

The object of these proceedings therefore is only to determine which of the rival claims should be accepted by this Court. In other words, even though the issue for determination is who owns the Property, the proceedings are indeed for the benefit of the Registrar (Deputy Sheriff) in that it helps determine to whom the attached Property should be released i.e. whether to the Claimant or to the Judgment Creditor. The proceedings cannot therefore be described as "an action" in its ordinary sense. See the case of *SALAMA v SHARANI (supra)*.

It is on the basis of the foregoing that I consider the Claimant's prayer before this Court for declaration of title to the land in question (among other reliefs) not only misconceived but an abuse of process.

I say so because of the obvious attempt by Claimant to use the present proceedings to obtain reliefs currently being sought before the Land Court in *Suit Numbers LD/ 0785/2018*. Clearly, it is no part of this Court's function in these Interpleader proceedings to determine serious issues which on the Claimant's own showing, are pending before the Land Court.

In any event, it is trite learning that declaratory reliefs are not granted lightly. In the case of *BOATENG v DWINFUOR [1979] GLR 360* the Court emphasized that:

*“The general rule was that the grant of a declaratory relief was discretionary and should be exercised with care and caution and judicially with regard to all the circumstances of the case...The test is whether it was just and appropriate in all of the circumstances of the case to grant it. ...”*

The Claimant, in my considered opinion was not entitled to seek substantive reliefs as was unfortunately done in these proceedings.

Returning to the case on hand, the record discloses that upon the Parties’ appearance before this Court for the settlement of the issue between them, one fact appeared not to be in dispute. It was that the 1<sup>st</sup> Judgment Debtor was in possession of the Property.

Since possession is prima facie evidence of ownership, this Court concluded that the initial onus of proof rested on the Claimant who had asserted that the Property did not belong to the 1<sup>st</sup> Judgement Debtor but to the Weija Stool. Claimant was therefore designated Plaintiff and the Judgement Creditor, the Defendant.

As in all civil suits, the standard of proof in this matter is on a balance of probabilities. The case of the Claimant as Plaintiff therefore only succeeds if he satisfies this Court on a balance of probabilities that his version is true and accurate and that of the Defendant false or mistaken.

*Benin JSC* in the case of *AMIDU v ATTORNEY GENERAL & OTHERS* J7/10/2014 DATED THE 27<sup>TH</sup> OF JUNE, 2019, explained the burden imposed on a Claimant in Interpleader proceedings as follows;

*“In this matter, the burden of producing evidence is on the Claimant, in the first instance. They ought to lead evidence albeit prima facie, to satisfy the court that they have a real or proper claim over the properties they have listed. They do so on a balance of probabilities. The burden then shifts to the judgement creditor to lead evidence...”* [Emphasis mine]

The *Black’s Law Dictionary [Eighth Edition]* defines the word Prima facie as:

*“at first sight, on the face of it, matters that if believed will be sufficient to prove the case of a party”*

It is in the backdrop of His Lordship’s reasoning that I shall proceed to examine the evidence of the Claimant.

Contrary to the Claimant’s assertions, an examination of his own *Exhibit B* discloses that the Land in dispute was acquired by the State under Executive Instrument dated the 10<sup>th</sup> of May 1979 for an Irrigation Project.

What then is the effect of the said acquisition?

*Section 1* of the (now repealed) *STATE LANDS ACT 1962 (ACT 125)* which was in force at the time of the said acquisition stated;

*“Wherever it appears to the President in the public interest so to do, he may by executive instrument, declare any land specified in the instrument, other than land subject to the Administration of Lands Act, 1962 (Act 123) to be land required in the public interest; and accordingly on the making of the instrument it shall be lawful for any person, acting in that behalf and subject to a month’s notice in writing to enter the land so declared for any purpose incidental to the declaration so made.....”*

*(3) On the publication of the instrument made under this section, the land shall, without any further assurance than this subsection, vest in the President on behalf of the Republic free from any encumbrance whatsoever..”*

See also *Section 7* the repealed *Administration of Lands Act, 1962 (Act 123)*.

It bears pointing out that, by virtue of *Section 282 (2)* of the *LAND ACT, 2020 (ACT 1036)* any and all acquisitions made by the State under the repealed laws remain valid until cancelled, revoked or terminated.

The combined effect of the above – mentioned provisions is therefore firstly that, the President (representing the State) has the power in the public interest to compulsorily acquire any land once due process is followed. Secondly, a person whose land has been compulsorily acquired by the State loses all interest in the land until the said acquisition is duly reversed and the land returned to the previous owner.



As rightly stated by the Judgement Creditor in its address, official duties will be presumed to have been regularly performed. *See Section 37* of the *EVIDENCE ACT, 1975 (NRCD 323)*. Therefore, in the absence of evidence rebutting this presumption, the said land will be deemed properly vested in the State.

In answer to questions posed during cross-examination by Counsel for Judgement Creditor, the Claimant testified as follows;

Q: *Take a look at Exhibit B. What is it?*

A: *This is a search document from Lands Commission*

Q: *So, this search was conducted by the Weija Stool is that correct?*

A: *That is so. This is because we know the government acquired the land for irrigation purposes through Executive Instrument. There is irrigation 1 and irrigation 2.*

Q: *Take a look at Exhibit B again...*

A: *Witness reads*

Q: *So per your own search which you have attached as evidence before this Court, none of the areas covered by the search is indicated in the records of the Lands Commission as belonging to the Weija Stool, is that correct?*

A: *That is so, but per the Executive Instrument that was used to acquire the land it indicates that the land is situate at Weija.*

Q: *Have you disputed the title of the government of Ghana on the portions listed under response 1 of your search?*

A: *I am not disputing it but when a government acquires land for a particular purpose and the land is not used for that purpose it reverts back to the owners. It is even stated in the land law, 2020....."*

By **Sections 242 and 247** of (**Act 1036**) the State upon taking a decision to withdraw from land compulsorily acquired, shall publish a Notice of Withdrawal at least once in the gazette and in a Newspaper of wide circulation before it withdraws from land compulsorily acquired.

Consequently, even if we proceed on the assumption that the land originally belonged to the Claimant, there is no evidence before this Court showing that the State has withdrawn from the said acquisition and returned the said land to the Claimant. Land compulsorily acquired by the State does not automatically revert to the previous owner. The law makes it clear that the State must take positive steps to formally withdraw from same. In any event the Claimant has failed to produce any proof that the government is no longer interested in using the land for the purpose for which it was acquired.

There is therefore no question, as matters currently stand, regarding the fact that the Claimant has no title to land on which the Property is situate.

It is well-settled that the legal and persuasive burden is borne by the party who would lose on an issue if he does not produce sufficient evidence to establish the facts asserted to the appropriate degree. I do not think the Claimant made out a case sufficient to even shift the burden of proof on to

the Judgement Creditor to displace his assertions. It is for this reason that the Claimant's claim must fail.

Ordinarily, this line of reasoning should dispose of the matter, without this Court having to go into the merits of the dispute. However in light of the circumstances of this case, the question still remains as to whether the Judgement Creditor may proceed with execution.

It is significant to note that the Judgement Creditor's *Exhibit 6* confirms the fact that the land on which the Property is situate has been compulsorily acquired by the State.

The law is clear as it appears in the case of *SAGOE & OTHERS v SOCIAL SECURITY AND NATIONAL INSURANCE TRUST [SSNIT] [2012]2SCGLR 1093* that compulsory acquisition of land by the State operates to extinguish any existing title or interest of the previous owner in the land. It would not matter if the State's acquisition was prior or subsequent to the interest held by the individual.

Consequently, the fact that the 1<sup>st</sup> Judgement Debtor has been in long undisturbed possession of the land in dispute, (if at all) does not help the case of the Judgment Creditor.

It is also worth noting that the contention of the Judgement Creditor that the 1<sup>st</sup> Judgement Debtor has been in undisturbed possession of the Property for 15 years would mean that the land in question had already

been compulsorily acquired by the State at the time the same was acquired by the 1<sup>st</sup> Judgement Debtor.

The undisputed evidence that it was compulsorily acquired by the State in 1979 establishes that the State's title to same spans over 40 years. Whether or not the 1<sup>st</sup> Judgement Debtor was aware of the State's acquisition is not for this Court to unravel here. But to the extent that an Executive Instrument of the State's acquisition had been published in the Gazette, the conveyance of the land to the 1<sup>st</sup> Judgement Debtor was void and its presence on the disputed land illegal. See the case of *MENSAH MONCAR v CHAINARTEY* [1972] 2 GLR 293.

It is also doubtful if the 1<sup>st</sup> Judgement Debtor can even validly claim Adverse Possession in this case as State Lands (even before the promulgation of *Act 1036*) generally fell outside the ambit of *Section 10* of the *LIMITATION DECREE, 1972 [ACT 54]*. This is because "intruders" onto State lands were viewed as implied licensees of the State, for which reason time did run against the State. See the case of *MEMEUNA MOUDY & ORS v ANTWI* [2003-2004] SCGLR 967 @ 985. *Section 236* of *Act 1036* however puts the matter to rest by criminalizing unlawful occupation of Public Lands.

Flowing from the above, it is quite clear that making an order for the Registrar (or Deputy Sheriff) to proceed with execution processes at the behest of the Judgement Creditor will amount to the Court sanctioning an illegality. This, to borrow the words of the eminent jurist *Atuguba JSC* in

the case of *NCS LTD v INTELSAT GLOBAL SALES & MARKETING LTD 2012 1SCGLR @ 218* will be contrary to the Court's very *raison d'etre*.

It is on the basis of the foregoing that I must order the Registrar to withdraw from execution of the attached the Property.

In the result the Claimant's claim fails. The Registrar of this Court is further ordered to release the Property from execution on grounds of the same having been compulsorily acquired by the State for Irrigation Development.

I make no order as to costs.

**(SGD)**

**AKUA SARPOMAA AMOAH (MRS)**

**(JUSTICE OF THE HIGH COURT)**

**Cases referred to:**

***SALAMI v SHARANI [1973] 2 GLR. 364***

***BOATENG v DWINFUOR [1979] GLR 360***

***AMIDU v ATTORNEY GENERAL & OTHERS J7/10/2014 DATED THE 27<sup>TH</sup> OF JUNE, 2019, Benin JSC***

***SAGOE & OTHERS v SOCIAL SECURITY AND NATIONAL INSURANCE TRUST [SSNIT] [2012]2SCGLR 1093***

***MEMEUNA MOUDY & ORS v ANTWI [2003-2004] SCGLR 967.***

***MENSAH MONCAR v CHAINARTEY [1972] 2 GLR 293.***

*NCS LTD v INTELSAT GLOBAL SALES & MARKETING LTD 2012*  
*1SCGLR @ 218*

*Statute referred to:*

*THE ADMINISTRATION OF LANDS ACT, 1962 (ACT 123)*

*THE STATE LANDS ACT (ACT 125)*

*THE LAND ACT, 2020 (ACT 1036)*

*THE EVIDENCE ACT, 1975 (NRCD 323).*

*Stated Edition*

*The Black's Law Dictionary [Eighth Edition]*