

IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT OF JUSTICE,
LAW COURT COMPLEX, PROBATE AND L/A DIVISION, COURT '1' HELD IN
ACCRA ON 30TH OCTOBER 2023 BEFORE HER LADYSHIP JUSTICE EUDORA
CHRISTINA DADSON

SUIT NO.PA1599/2020

OPANIN ADUSEI JOB }
COLEMAN DANIELS }
(HEAD OF FAMILY AND PRINCIPAL }
MEMBER OF THE BOAFO FAMILY OF } PLAINTIFFS
ABUOM RESPECTIVELY, SUING BY }
THEMSELVES AND ON OF THE BOAFO }

VS

1. STEPHEN KWAME BOAFO }
2. ANTHONY AMPONSAH }
ALL OF H/NO. 35 AKOTO LANE }
MATEHEKO, ACCRA } DEFENDANTS
3. VERA GYAMBIBI }
4. DOMINIC BOAFO }
5. STEPHANIE BOAFO }

PARTIES: ABASEN T

COUNSEL: SOLOMON COLINS ESHUN FOR THE PLAINTIFFS PRESENT

SETH PEPRAH FOR KWABENA KYERE FOR 1ST AND 2ND
DEFENDANTS PRESENT

BAFFOUR ASARE KORANG FOR 3RD TO 5TH DEFENDANTS PRESENT

JUDGMENT

[1] Introduction

This is an action, commenced by the issuance of a Writ of Summons, dated 11th September 2020. Judges have been advised to look with suspicion when claims are made against deceased persons. In the case Of **Kusi & Kusi vs. Bonsu [2010] SCGLR page 60 at page 73, 82-84** the Supreme Court stated the principle succinctly as follows:

“...the claims the plaintiff family made against the deceased Asante in respect of the property, were all critical assertions against the deceased, in whose favour the presumption of ownership stood. These claims belong to the class of evidence that must first be received with the greatest caution and scrutinized carefully before being given the requisite weight. It is however clear from the evidence that the plaintiff family acquitted themselves creditably, by discharging satisfactorily, the legal burdens placed on them... The main argument is that the respondents, i.e. the plaintiff’s family, failed to provide the requisite corroboration to the claim that Asante signed the petition exhibit A. There is no intractable rule of law that charges or claims against a dead person could not succeed without corroboration. To the contrary, the discernible principle was that a court could proceed on the uncorroborated evidence if satisfied about its truthfulness. The only rider or caution was that the court must examine the evidence critically, with utmost care, weighing or sifting it thoroughly, to ensure there were no loopholes or that the charge or claim did not suffer from any absurdities or the like. A judge in receipt of uncorroborated evidence consisting in the main of charges against a deceased person would not swallow the story lock, stock and barrel, but would

first view it from a suspicious standpoint. If the story as presented was neither incongruous, preposterous, unreasonable, illogical, nor incredible, then the judge might proceed to give it the weight it deserved. The exercise would relate to the cogency or the weight to be attached to the evidence given...¹

Dotse JSC (as he then was) has postulated in the case of **Fosua & Adu-Poku v Dufie (Deceased) & Adu Poku-Mensah [2009] SCGLR 310 at 316 & 349** that:

“ It is also to be borne in mind that claims against the estate of a deceased person are to be viewed with caution and very cogent evidence is necessary to sustain the same...The law is settled that whenever issues touching the estate of a person who is deceased comes into play, the courts must be very slow in construing evidence against the dead person. See In re Krah (Decd); Yankyerah & Ors v Osei-Tutu [1989-90]1 GLR 638 at 662, SC and Bisi v Tabiri alias Asare [1987-88] 1 GLR, 360 at 409, where the principle was stated that “The well-known rule is that claims against a deceased’s estate must be scrutinized with circumspection.”²

[1.2] The Action

The Plaintiffs issued a Writ of Summons with an accompanying Statement of Claim on 11th September 2020 which was amended pursuant to an order of joinder on 24th June 2021. The Plaintiffs endorsed their amended Writ of Summons with an accompanying Statement of Claim for the following reliefs:

¹ See also the case of *Gandy V. Macaulay(1885) 31 CH D 1*, “where it was held that when an attempt is made to charge a dead man in a matter, in which if he were alive he might have answered the charge, the evidence ought to be thoroughly sifted, and the mind of any Judge who hears it ought to be, first of all in a state of suspicion; but if in the end the truthfulness of the witnesses is made perfectly clear and apparent, and the tribunal which has to act on their evidence believes them, the suggested doctrine [of corroboration] becomes absurd”

² See also the case of *OSEI SUBSTITUTED BY GILARD V KORANG [2013-14] 1 SCGLR 221*

“whatever the statement by Brett MR in the English case of *In Re Garnett; Gandy v MacCauley (1885) 3 Ch D 1 at 9* meant in the latter part of the nineteenth century, might not wholly apply in Ghana today where section 80 of the Evidence Act 1975 (NRCD 323), states how witnesses are evaluated for the assessment of their credibility. A statement that creates the impression that a claim against the estate of a deceased must be viewed with suspicion does not provide a useful criterion for assessing the credibility of witnesses in court in the administration of justice in our courts. However one looks at it, Brett MR did not say or was to construed as meaning that the evidence in a case of a claim against the estate of a deceased person must be rejected outright on the ground of his death per se. We agree with him that in such cases, the entire claim ought to be scrutinized meticulously and carefully weighed for its inherent probative value. Of course, that the person is dead and therefore cannot contradict, explain or give evidence on his version of the case may be considered²”

1. *“A declaration that the properties acquired with proceeds from the coca farms belonging to the family which have been listed in the Will of the deceased are family properties and the deceased had no right to devise them solely to the wife and children.*
2. *An order that part of the properties acquired with the proceeds from the cocoa farms belonging to the family be transferred to the family.*
3. *An order directed at the Executors to return the Mercedes Benz ML350 to its owner, Joseph K. Boafo or in the alternative refund the sum of ten thousand Dollars (US\$10,000.00) to the said Joseph K. Boafo*
4. *An order restraining the Executors from distributing the properties including Bank Accounts and the Mercedes Benz ML 350 until the final determination of this suit.”*

The 1st and 2nd Defendants entered appearance and filed their Statement of Defence on 25th November 2020 and they filed an amended Statement of Defence on 5th October 2021. The 3rd to 5th Defendants were joined to the suit through an order for joinder. The 3rd to 5th Defendants entered appearance on 16th July 2021 and filed their Statement of Defence on 16th July 2021 and filed another Statement of Defence on 29th July 2021 which was amended on 23rd November 2021. The Plaintiffs filed a Reply to the Statement of Defence of the 3rd to 5th Defendants on 8th October 2021 and same was amended on 30th November 2021.

[1.2] The Issues for determination

The Plaintiffs’ Counsel on 14th January 2021 filed Application for Directions in which about five (5) issues were to be set for trial. The 3rd to 5th Defendants’ Counsel filed additional issues on 23rd November 2021 to set out about six (6) issues for trial. At the close of pleadings the following issues, ten (10) were set down by the Court for determination of the controversy between the parties:

1. *“Whether or not the Testator used proceeds from the cocoa farms and other properties he inherited from the family to acquire other properties for himself and bequeathed such properties to his wife and children only as per his WILL.*
2. *Whether or not the family was entitled to any part of the property acquired by the Testator using proceeds from the cocoa farms and other properties he inherited from the family whilst alive.*
3. *Whether the Testator paid for the Mercedes Benz his brother Joseph K. Boafo shipped to him from the United States of America and could therefore bequeath to his wife and children as per his Will.*
4. *Any other issue arising out of the pleadings.”*

Additional issues by 3rd -5th Defendants

1. *“Whether or not Letters of Administration of the estate of the Late Nana Anterkyi Mensah were jointly granted to the customary successor, surviving spouse and surviving son respectively of the late Nana Anterkyi Mensah.*
2. *Whether or not the late Paul Boafo caused his name to be expunged as an administrator of the estate of the Nana Anterkyi Mensah.*
3. *Whether or not the late Paul Boafo accounted for his 6-year stewardship of the estate of his uncle as customary successor.*
4. *Whether or not the late Paul Boafo ceased to have any dealings with the estate of the late Nana Anterkyi Mensah from the time his name was expunged as an administrator*
5. *Whether or not Plaintiffs’ action was statute-barred.*
6. *Whether or not Joseph K. Boafo’s claim against the estate of the late Paul Boafo is statute-barred.”*

[1.3] After setting down the above issues, the Court ordered the parties to file their respective witness statements and attach all documents they intended to rely on in the trial. The parties duly complied and after Case Management Conference the matter

was set down for trial. The Plaintiffs' testified per the 2nd Plaintiff and called no witness. The 1st and 2nd Defendants' evidence was proffered by the 1st Defendant only. The evidence of 3rd to 5th Defendants was proffered by 5th Defendant only.

After completion of hearing the Plaintiffs' Counsel filed his written address on 22nd May 2023, 1st and 2nd Defendants Counsel filed his on 18th May 2023 and 3rd to 5th Defendants Counsel filed his written address on 5th May 2023.

[2] Brief facts of the case

The 2nd Plaintiff testified per his adopted witness statement as follows:

"The deceased was a member of the Ekouna family of Abuom when he was alive and succeeded our ancestor Nana Anttarkyi (sic) Mensah who occupied the family stool and died in 1995. The deceased Paul Boafo inherited from our ancestor in 1996 cocoa farms belonging to the family.

The deceased over the years harvested the cocoa from the coca farms he inherited from our ancestor but never accounted for the proceeds to the family. He however commingled such proceeds with his own earnings as an engineer and used such proceeds to acquire properties.

Therefore the properties he acquired had the stamp of the family and have become family properties since he used the proceeds from the family coca farms to acquire such properties and failed to separate his earnings as an engineer from the proceeds he obtained from the cocoa farms.

The Plaintiffs pleaded in their Statement of Claim that the deceased Paul Boafo had a

brother by

name Joseph K. Boafo who resides in the United States of America. According to the

Plaintiffs,

this brother bought a Mercedes Benz ML 350 and shipped to the deceased. The

deceased was

required to pay an amount of US\$10,000.00 (Ten Thousand dollars) to the brother but this was never done.

It is the Plaintiffs case that as head of family and the principal member of the family they have a bounden duty to protect the interest of the family and therefore demand that the property situate at Anwomaso mentioned in the deceased Will be given to the family as part of the family share in the properties acquired by the deceased using proceeds from the cocoa farms he inherited from the late Nana Anterkyi Mensah.

The 1st Defendant testifying per his adopted witness statement stated that the deceased testator prior to his death was in control of the cocoa farms he inherited from Nana Anterkyi Mensah. It is the case of the 1st and 2nd Defendants that they have not been indolent in protecting the interest in the estate and they are ready to distribute the estate in accordance with the wishes of the deceased last will and testament unless it is proved otherwise that any of the properties does not belong to him.

It is the case of 3rd to 5th Defendants that the deceased accounted for his 6-year stewardship of his dealings with the estate of his uncle to the family and he discharged himself honourably to all and sundry. It is the further case of the 3rd to 5th Defendants that the devises in the Will of the deceased are his self-acquired properties and were acquired during the subsistence of the marriage between the deceased and the 3rd Defendant and same was properly devised same to the mentioned beneficiaries in his will dated 29th June 2017.

[3] Standard and burden of proof

Now, in resolving the dispute among the parties, I believe the issues to be determined are both legal and factual. The factual issues are to be determined by credible evidence adduced before the court. However, in the determination of the factual issues, the court applies tests based on legal principles to arrive at a conclusion as to whether any of the

parties has proved his case to the standard required by law. This is because the law is trite and same supported by statute that for a court to decide a case one way or the other, each party to the suit must adduce evidence on the issues to be determined by the court to the standard prescribed by law.

The above legal position is supported by various provisions of the Evidence Act, 1975 (NRCD 323). Section 14 of the Act for instance provides:

“(14). Except as otherwise provided by law, unless and until it is shifted a party has the burden of persuasion as to each fact the existence or non-existence of which is essential to the claim or defence he is asserting”.

The burden of producing evidence by the Plaintiff in the suit as well as the burden of persuasion is one to be determined on the preponderance of probabilities as defined by Section 12(2) of the Evidence Act, 1975 (NRCD 323).

It is also trite law that for every case there is a burden of proof to be discharged and the party who bears the burden will be determined by the nature and circumstances of the case; See Sections 10 – 17 of the Evidence Act, 1975 (NRCD 323). I note that there is no paucity of case law interpreting the provisions of NRCD 323.

In **Ababio vs Akwasi 111 [1994-95] Ghana Bar Report, Part 11, 74** the court stated that a party whose pleadings raise an issue essential to the success of the case assumes the burden of proving such issue. I shall now proceed to examine the evidence adduced in support of the Plaintiffs’ case and will relate same in the context of the standard of proof I have already set out in this judgment.

It is trite learning; that the Plaintiffs bears the evidential burden to adduce sufficient evidence if they is to secure a ruling on the existence or non-existence of the fact that the deceased Paul Bofo has commingled proceeds from family cocoa farms with his personal funds in the acquisition of the properties he has devised in Exhibit A (deceased last Will and Testament) to the detriment of the family.

In the case of **Ackah v Pergah Transport Ltd [2010] SCGLR 728 at page 736** Adinyira JSC (as she then was) held as follows:

“It is a basic principle of the law of evidence that a party who bears the burden of proof is to produce the required evidence of the facts in issue that has the quality of credibility short of which his claim may fail...”

The Plaintiff’s came to court and dragged the Defendants along in respect of this issue it is the Plaintiffs’ who will lose first, and therefore has the duty or obligation to lead evidence to forestall a ruling being made against them.

Have the Plaintiffs’ adduced sufficient evidence on this issue to forestall a ruling being made against them? It is trite law that matters that are capable of proof must be proved by producing sufficient evidence so that on all the evidence a reasonable mind could conclude that the existence of the fact is more reasonable than its non-existence³.

Date-Bah JSC (as he then) was held in the case of **T. K. Serbeh & Co Ltd v Mensah [2005-2006] SCGLR 341 at 360-361** that for, however credible a witness may be her bare affirmation on oath or the repetition of her averments in the witness box cannot constitute proof.

[4] Court’s evaluation, analysis and opinion

In proceeding to evaluate the nature of the evidence adduced at the trial I need to caution myself that this suit concerns the late Paul Boafo who is now deceased and is unavailable as a witness in terms of **S. 116 (e) (iii) of the Evidence Act, 1975 (NRCD 323)** and therefore cannot appear to tell his side of the story as to whether he commingled proceeds from the family’s cocoa farms with his own personal resources to acquire the properties devised in his Last Will and Testament. The settled rule of law is that the evidence involving a deceased person is always received and treated with extreme circumspection and suspicion.

³ Ackah vs Pergah Transport Ltd & Others [2010] SCGLR 728@736

The policy rationale is that the deceased, unlike the Biblical Lazarus, cannot come out of his grave to tell his side of the story, to assert any claim or disprove one. Proof must therefore be strict and utterly convincing from the living witnesses.

The Court shall determine the main issues as set out above based on the facts and evidence adduced at the trial. Indeed, it is the policy of the law that only those issues that are germane to the determination of a case must be decided by the court and not irrelevant issues although the parties might have led evidence on them. See the case of **Domfe v Adu (1984-86) 1 GLR 653**.

[4.1] Issue of Plaintiffs' action being statute-barred –

Issue 5 : *Whether or not Plaintiffs' action was statute-barred.*

Litigation must necessarily come to an end. It is in view of this obvious fact the Limitations Act, 1972 (NRCD 54) has prescribed limitation periods for various actions. Where a cause of action accrues to a person but he fails to take advantage of it within a stated period, that cause of action may subsequently be barred by the Limitations Act, supra. In the case before me, the 3rd to 5th Defendants who are alleging that the Plaintiffs' action is statute barred bear the onus of proof.

The 3rd to 5th Defendants contend that the Plaintiffs cause of action arose when the deceased applied to be removed as Administrator of the Estate of Nana Anterkyi Mensah in the year 2004.

The Plaintiffs have drawn a distinction between the personal estate of their deceased ancestor who estate the deceased Paul Bofo was appointed as one of the Administrators and the family cocoa farms which came under the custody of the late Paul Bofo by virtue of his office as a customary successor to Nana Anterkyi Mensah. The removal of the deceased as Administrator did not mean he had also been removed as Administrator. It is the Plaintiffs case that their cause of action arose in the year 2017 when the deceased Paul Bofo died after he had failed severally to account to the family when called upon to do so.

In the book Derick on Pleadings in Ghana, page 19 the Author Derick Adu-Gyamfi states that a pleading must contain fact not law but the rules permits a party to plead a point of law fully and the point so raised may be determined at any time before or at the trial. A point of law alleges a legal conclusion to be drawn from the facts pleaded to destroy the claim or defence of adversary.

S. Kwami Tetteh in his invaluable book Civil Procedure, A Practical Approach at page 277 has opined that a statute of limitation may be pleaded by the title or by making such averments in the pleadings as would evince an intention to invoke the statute.

In **National Omnibus Services Authority v Owuo [1969] CC 158 CA**, the Court of Appeal held *“the Defendant pleaded that the claim was statute-barred without specifying which statute. In argument, the defendant provided the statute and the plaintiff argued in response. The Court of Appeal upheld the plea on the ground that the defendant’s omission to plead the statute did not cause surprise to the plaintiff. Where the defendant pleads a limitation statute and the plaintiff joins issue with the defendant on the defence, the burden would devolve on the plaintiff to establish that the claim is not statute barred.”*

How did the 3rd to 5th Defendants plead limitation?

The 3rd to 5th Defendants pleaded in paragraphs 17 to 19 of their amended Statement of Defence filed on 23rd November 2021 as follows:

“3 - 5th Defendants aver that in any event the present action by the Plaintiffs is statute barred.

3rd – 5th Defendants aver that the late Nana Aterkyi Mensah, Plaintiffs’ ancestor died about twenty- five (25) years ago.

3rd – 5th Defendants further aver that the present action is not maintainable as Plaintiffs’ cause of action expired long ago.”

The Plaintiffs in paragraph 13 of their amended reply to the amended statement of defence of the 3rd, 4th and 5th Defendants filed on 30th November 2021 pleaded as follows:

“In further answer, the plaintiffs say that the estate in question is that of the Testator Paul Boafo and not Nana Anterkyi Mensah. The Testator Paul Boafo continued to manage the cocoa farms he

inherited till his death on August 2017 and therefore the action against his estate is not statute-barred."

NRCD 54, Limitation Act, 1972 Section 8 provides that:

"Section 8 : Recovery of movable estate of deceased persons

(1) Subject to subsection (3), a person shall not bring an action in respect of a claim to the movable estate of a deceased person or to a share or an interest in the estate, whether under a will or on intestacy, after the expiration of twelve years from the date when the right to receive the share or interest accrued

...

(3) A period of limitation fixed by this Act does not apply to an action against a personal representative or a person claiming through the personal representative where the claim is founded on a fraud to which the personal representative was privy or a party."

Section 8 (1) refers to the movable property of the deceased. What is a moveable property? Property that you own and can take with you, which does not include houses, apartments, or land: Works of art are regarded as moveable property.

The property under consideration here is immovable properties which includes houses, apartment or land.

A reading of Section 8(1) and (3) of Act 54 together, shows that time does not run if the claim is founded on fraud.

The deceased testator died in 2017 and the Plaintiffs cause of action arose in the year 2017

I find that the 3rd to 5th Defendants who bear the burden to prove that the Plaintiffs' action was statute-barred have not satisfactorily discharged that burden.

I find that this action is not statute-barred. I therefore resolve additional issue 5 against the 3rd to 5th Defendants.

[4.2] I turn to the crux of the Plaintiffs' claim. They are **issues 1 and 2** as it appears issue **1** is linked to issue **2**. That being the case it shall be desirable to combine both issues. These are:

Issue 1: Whether or not the Testator used proceeds from the cocoa farms and other properties he inherited from the family to acquire other properties for himself and bequeathed such properties to his wife and children only as per his WILL.

and

Issue 2: Whether or not the family was entitled to any part of the property acquired by the Testator using proceeds from the cocoa farms and other properties he inherited from the family whilst alive.

In applying the principle in **Kusi & Kusi vs Bonsu** (supra) and **Fosua & Adu-Poku vs Dufie & Adu Opoku-Mensah** (supra) I shall evaluate the evidence on record with caution to see if there is very cogent evidence to sustain same.

How then did the Plaintiffs prove their case:

The 2nd Plaintiff testifying under oath per his adopted witness stated that the Plaintiffs are the head of family and principal member of the Ekouna family of Abuom. The 2nd Plaintiff states as follows:

“The deceased was a member of the Ekouna family of Abuom when he was alive and succeeded our ancestor Nana Anttarkyi (sic) Mensah who occupied the family stool and died in 1995. The deceased Paul Boafo inherited from our ancestor in 1996 cocoa farms belonging to the family.

The deceased over the years harvested the cocoa from the coca farms he inherited from our ancestor but never accounted for the proceeds to the family. He however commingled such proceeds with his own earnings as an engineer and used such proceeds to acquire properties.

The 2nd Plaintiff tendered in evidence Exhibits **A, B, “C”** series and **D** series. Exhibit **C series** is Ghana Cocoa Board Farmers Passbook spanning from 1996 to 2017.

It is the further case of the 2nd Plaintiff that the properties he acquired therefore had the stamp of the family and have become family properties since he used the proceeds from the cocoa farms to acquire such properties and failed to separate his earnings as an engineer from the proceeds he obtained from the cocoa farms.

The 2nd Plaintiff testified per his adopted witness statement as follows:

“In his Will exhibit A the deceased devised all the properties he acquired to his wife and children though he knew that such properties became partially family property. The deceased never mentioned the family in the Will neither did he provide for the family thus depriving the family of the properties that should have legitimately come to the family.”

When 2nd Plaintiff was cross-examined by Counsel for 3rd to 5th Defendants on 14th July 2022 this was what transpired:

“Q. Can you tell the court the occupation of the testator?

A. He was an engineer at PWD.

Q. And you are aware that aside being an engineer at PWD he also had a company he was running.

A. That I do not know.

Q. You would agree with me that the devises in the Will of the Testator had a self-acquired properties of the Testator.

A. I agree My Lady.

Q. Take a look at Exhibit C1, you will agree with me that the date of issue of the said Exhibit C is 4th October 2002

A. That is so.

Q. When you go to Exhibit C2, you will notice that the commencement date on that sheet is 18th October 1996.

- A. *That is so.*
- Q. *I am putting it to you that this document is a self-serving document.*
- A. *That is not so.*
- Q. *You will also notice from the whole of Exhibit C series that the document does not bear the signature of the Testator.*
- A. *No there is no signature of the Testator. The testator was not the one weighing the cocoa for sale purposes.*
- Q. *Are you aware that before the Testator dealt with the properties of your late ancestor, he obtained Letters of Administration sometime in 1998 to administer same.*
- A. *I am aware My Lady. The Letters of Administration obtained was in respect of my uncle Nana Anterkyi Mensah properties and not in respect of the cocoa farm belonging to the family.*
- Q. *So it is your testimony that the cocoa farm did not form part of the property the Testator took Letters of Administration to administer, not so.*
- A. *That is so My Lady.*
- Q. *Are you also aware that sometime in 2004, the Testator applied to the court for his name to be removed as an Administrator of the estate of your ancestor (Nana Anterkyi Mensah)?*
- A. *That is so. The cocoa farm belonging to our ancestor that was with Paul Boafo to manage were not in respect of the administration of the estate but it was rather in respect of his uncle by name Anterkyi Mensah's personal property which they went for his name to be removed as an administrator of the estate*
- Q. *You will agree with me that before the Testator applied to the court for his name to be removed as an administrator of his late uncle's estate he informed the family that he was no longer interested in being the customary successor of his late uncle.*
- A. *That is not so. After the Testator succeeded his late uncle property, Nana Anterkyi Mensah gave his cocoa farm to his children. However his children were many and they did not know how to share the cocoa farm since they were many. When the family that met it*

decided by the family that since it is difficult to divide the cocoa among the children Mr. Paul Boafo should manage the cocoa farm so that when it is harvested the proceeds are distributed among the said Nana Anterkyi Mensah's children.

Q. So you are now telling the court that the cocoa farm belonging to your ancestor was to be distributed among his children and therefore the cocoa farm is not a family property belonging to the extended family of Paul Boafo.

A. That is not so My Lady. His personal cocoa farm that he distributed to his children is not the family cocoa farm that was handed to him."

From the answers elicited from 2nd Plaintiff's under cross-examination he states that the deceased Paul Boafo was an engineer. The 2nd Plaintiff in a question posed to him answered that the issue date of **Exhibit C series** was **4th October 2002** and agrees that the commencement date on that sheet is 18th October 1996. Examining Exhibit C series, I observed the following on **Exhibit C1**:

*"Name: **Paul Boafo***

*Village/Society: **Abuom/Afutuo***

*District and Region: **Sankore -B/A***

*Licensed Buying Agent: **Kyei Mensah***

*Registration No: **AB/05/02/01***

*Date of issue: **4th Oct. 2002"***

On Exhibit C2:

*"Date – **18th October 1996"***

On exhibit C12:

*Last entry date: "**6th September 2017."***

I shall revert shortly to the issue of the dates.

Plaintiffs **Exhibit B** and 1st and 2nd Defendants **Exhibit 1** is the probate certificate. The certificate states that the deceased died on 18th August 2017.

The Plaintiffs in their pleadings did not plead the number of cocoa farms the family had. The only reference to the number of cocoa farms the family allegedly had, and their location was part of the answers elicited from the 1st Defendant when Plaintiffs' Counsel cross-examined him on 18th July 2022. Below is an extract of that cross-examination:

Q. *"Does your family own a cocoa farm at a place called Susuku.*

A. *Yes.*

Q. *Does your family also own a cocoa farm at a place called Seaso also known as Kukrubur.*

A. *Yes.*

Q. *When your uncle Nana Anterkyi Mensah was alive he was managing these two-cocoa farm on behalf of the family, not so.*

A. *Yes.*

Q. *When Nana Anterkyi Mensah died who was appointed customary successor.*

A. *Paul Boafo.*

Q. *So when Mr. Paul Boafo was appointed the customary successor he continue to manage the family cocoa farms on behalf of the family not so.*

A. *Yes.*

Q. *Tell the court whether there was an occasion where Mr. Paul Boafo accounted for his stewardship to the family in so far as the family cocoa farms were concern.*

A. *No."*

The 5th Defendant raised query about the deceased Paul Boafo's signature on **Exhibit C series** when she was being cross-examined by Counsel for Plaintiff. The following transpired when she was cross-examined by Counsel for Plaintiff on 22nd February 2023:

"Q: Look at Exhibit C as contained in the Plaintiff's witness statement, what is it?

A: *Farmers passbook.*

Q: *Turn to exhibit C1, whose particulars are contained in exhibit C 1?*

A: *The name on it is Paul Boafo.*

Q: *Is he the same testator we are talking about.*

A: Yes.

Q: *From Exhibit C2 through to exhibit C12, what do they show?*

A: *It show figures but I do not understand what it shows.*

Q: *Exhibit C2, the first part we have 1996, 1997 M/C season.*

A: *I notice that this is not the signature of my father.*

Q: *Which one is not the signature of your father?*

A: *Exhibit C1, there is a signature under the picture.*

Q: *Beside the signature what else can you see?*

A: *I can see his picture.*

Q: *Look underneath the picture there is a signature and besides the signature there is something there.*

A: *There is a stamp of the district manager.*

Q: *Do you also see a thumb print there.*

A: Yes.

Q: *So we are going through exhibit C2 to C12 and Exhibit C2 we have the first part 1996, 1997 season, do you see that one.*

A: Yes.

Q: *You also see the total number of cocoa bags which translate to some kilograms which were received by the purchasing officers.*

A: Yes.

Q: *So as I was saying from exhibit C to C12 these show the cocoa that were sent to the buying centres by the Testator.*

A: *It is not true, because the signature on the document is not my father's signature.*

Q: *On this exhibit C –C12, clearly show that when the testator succeeded his uncle who was managing the cocoa farms on behalf of the family the testator continued to manage the farms belonging to the family.*

A: *It is not true.*

Q: *And that your father invested the proceeds from the cocoa farms to acquire other properties.*

A: *It is not true."*

The 5th Defendant was emphatic that the signature on Exhibit C series was not that of the deceased

Paul Boafo.

Exhibit A is the Last Will and Testament of the deceased Paul Boafo and Plaintiffs Exhibit which was tendered without objection from the Defendants. The validity of the deceased Paul Boafo signature on Exhibit A has not been challenged by any of the parties before this Court.

Exhibit C series is the Plaintiffs' Exhibit. On Exhibit C1 from the 5th Defendant answers elicited under cross-examination, the photograph on Exhibit C1 is the deceased Paul Boafo however the signature is not that of the late Paul Boafo. The evidence before this Court does not disclose whose thumbprint is besides the impugned signature of the deceased Paul Boafo.

I have compared the deceased Paul Boafo's signature on Exhibit A and Exhibit C1 and with my untrained eyes at forensic examination I can see marked differences between the two. Admittedly the signature on Exhibit C1 was purportedly signed 15 years before the signature on Exhibit A. It is trite that no two signatures from one author are the same, but there would be similarities in both signatures. In this instance the two signatures are markedly different.

I have several questions which the evidence on record does not readily proffer me any answers.

Are the Plaintiffs saying that from the year 1996 to 2017, a period spanning over two decades the deceased Paul Boafo dealt with only one Produce buying company as Exhibit C series seeks to portray?

What was the size of the family cocoa farms, and what is the correlation between the "amount received" quoted on Exhibit C series and the deceased Paul Boafo's finances?

Back to the issue of the dates, no reasons were assigned for the date of issue being 4th October 2002 whilst the commencement date was 18th October 1996. The last entry in **Exhibit C 12** was 6th September 2017. The evidence shows that the deceased Paul Boafo died on 18th August 2017. Clearly there were transactions in the Farmers Passbook **Exhibit C series** after the death of the deceased.

Adwumapa Buyers Ltd is a going entity. What prevented the Plaintiffs from inviting them to testify on their behalf and explain who received the money for the sale of the cocoa beans after the death of Paul Boafo on 18th August 2017?

All parties to this suit admit that the deceased Paul Boafo was an engineer who worked in his lifetime.

The gaps in the Plaintiffs' evidence shall be construed against them in view of the evidential burden they carry in respect of issues **one** and **two**.

In the case of **Boateng alias Beyeden v Adjei [1963] 1 GLR** the Court of Appeal states at 296 that:

"... it has never been a principle of the customary laws of Ghana that the self-acquired properties (whether acquired before or after the accession to the stool) of a stool occupant become merged into stool properties by the mere reason either of the owner of such properties occupying a stool ..."

The Court of Appeal further stated at 300:

"... the customary law is that every person (be he head of family, an ordinary member of a family or a stool occupant) is entitled to the full enjoyment of his own property and is free to do what he likes with it, and the property of a citizen of Ghana does not become stool property merely because he occupies a stool."

In the case of **Badu and Another v Kra [1991] 1 GLR 563**, the Court of Appeal speaking through Essiem JA delivered itself thus:

"There is no customary law that whenever a person inherited property as customary successor any subsequent property he acquired became family property. Accordingly, where, a person was

claiming that the properties acquired by a deceased and enjoyed by him in his lifetime exclusively as his own, was family property merely because the deceased during his lifetime had inherited family property, that person must produce cogent and convincing evidence to support his case if he was to succeed in his claim. Where, as in the instant case, there was evidence that the deceased through his own hard work and industry could acquire the property, the family should have led satisfactory evidence to establish its claim to the property. On the evidence however, they had failed to discharge that burden. Failing that the court would agree with the trial judge and dismiss the appeal.”

Ollennu J (as he then was) held in the case of ***Majolagbe vrs Larbi [1959] GLR 190*** that

Proof in law is the establishment of facts by proper legal means. Where a party makes an averment capable of proof in some positive way, e.g. by producing documents, description of things, reference to other facts, instances, or circumstances, and his averment is denied, he does not prove it by merely going into the witness-box and repeating that averment on oath, or having it repeated on oath by his witness. He proves it by producing other evidence of facts and circumstances, from which the Court can be satisfied that what he avers is true.

Simply put, to prove a fact is more than merely rehashing an allegation either by the party himself/herself or his/her witnesses on oath. See the case of ***Klah vrs Phoenix Insurance Co Ltd [2012] 2 SCGLR 1139***. The party alleging an issue must produce sufficient evidence of facts, which overall, leads to the reasonable inference of the existence or non-existence of the fact alleged. This is the import of section 10(1), (2), and section 11(1), (4) of the *Evidence Act*, which the Supreme Court in ***Ackah vrs Pergah Transport Ltd [2010] SCGLR 728 at 736*** provided clarity to as follows:

“It is a basic principle of law on evidence that a party who bears the burden of proof is to produce the required evidence of the facts in issue that has the quality of credibility short of which his claim may fail.... It is trite law that matters that are capable of proof must be

proved by producing sufficient evidence so that on all the evidence a reasonable mind could conclude that the existence of the fact is more reasonable than its non-existence."

I have no hesitation in dismissing the Plaintiffs' contention that the deceased Paul Boafo commingled the proceeds from the family cocoa farms with his own earnings as an engineer to acquire the properties devised in his Will. This is because apart from the allegation made as contained in the pleadings and the impugned Exhibit C series no evidence was led to substantiate the allegation. **Bank of West Africa Ltd v Ackun [1963] 1 GLR 176 @ 181** applied.

I resolve issues 1 and 2 against the Plaintiffs. Having resolved issues 1 and 2 it has rendered the consideration of additional issues 3 and 4 moot.

[4.2] I shall now proceed to resolve issue 3 and additional issue 6 since they are interrelated.

Issue 3: *Whether the Testator paid for the Mercedes Benz his brother Joseph K. Boafo shipped to him from the United States of America and could therefore bequeath to his wife and children as per his Will.*

Issue 6: *Whether or not Joseph K. Boafo's claim against the estate of the late Paul Boafo is statute-barred."*

The Plaintiffs pleaded in their Statement of Claim that the deceased Paul Boafo had a brother by name Joseph K. Boafo who resides in the United States of America. According to the Plaintiffs, this brother bought a Mercedes Benz ML 350 and shipped to the deceased. The deceased was required to pay an amount of US\$10,000.00 (Ten Thousand dollars) to the brother but this was

never done.

The Plaintiffs pleaded as follows:

“The vehicle in question is one of the vehicles the deceased bequeathed to his wife and children who are currently using the vehicle. The said brother Joseph K. Boafo requests the Executors to return the vehicle to him or in the alternative pay for value of the vehicle which is ten thousand dollars (US\$ 10,000.00).”

The 2nd Plaintiff reiterated the pleadings in his adopted witness statement and tendered in evidence **Exhibit D series**. The Court has observed that **Exhibit D series** is from Exhibit D1 to D11. These are documents relating to the vehicle. Exhibits D4 and D11 are the same documents. Exhibits D3, D7, D8, D9 and D10 are the same documents.

The 5th Defendant testifying per her adopted witness statement stated that the deceased in his lifetime acquired a Mercedes Benz ML 350 in 2010. The deceased used the vehicle personally and had possession of same until his demise in 2017. The 5th Defendant contends that Joseph Boafo did not lay claim to the vehicle or the value of the vehicle in the lifetime of the deceased Paul Boafo.

It is the case of the Plaintiffs that the vehicle in question belongs to Joseph Boafo or that he bought same for the deceased Paul Boafo for which he did not pay. The claim for the return of the vehicle is at the instance of Joseph Boafo, the Plaintiffs' claim. The Plaintiffs are not claiming that the vehicle in question is family property.

The following evidence crucial and relevant to the issue under discussion was elicited during the cross-examination of the 2nd Plaintiff on 14th July 2023 by Counsel for 3rd to 5th Defendants:

- Q. *Take a look at Exhibit D, you will agree with me that you were not present when the purported transaction took place between the Paul Boafo and the said Joseph K. Boafo.*
- A. *That is so I was not there but sometime ago Joseph Boafo returned from US came me in the house that his elder brother Paul Boafo has made him buy Mercedes Benz ML 320, that he bought it for an amount of \$10, 000. When he bought the car for him he never*

paid for it and always gave excuses and that he has heard that he has come to his mother's house at Patase and that since I am the only uncle for the family I should accompany him to recover the money from him. That was when I got to know that Joseph Boafo has bought a car for his elder brother Paul Boafo of which he has refused to pay for it.

Q. Since you are not present during this transaction it goes without saying that your testimony before this court is purely hearsay.

A. It is not hearsay."

Since the vehicle in question is clearly not family property do the Plaintiffs as head of family and principal member of the family have capacity to litigate over same? I have not come across any power of attorney granted to the Plaintiffs by Joseph Boafo authorizing them to act in respect of the vehicle for him.

It was held by Benin JSC (as he then was) in the **Standard Bank Offshore Trust Company Ltd vs NIB [2017-2018] 1 SCGLR 707** as follows:

*"Capacity to sue is a very critical component of any civil litigation without which the plaintiff cannot maintain any claim."*⁴

The Plaintiffs clearly lack capacity in respect of relief 3 endorsed the Plaintiffs Writ of Summons and accompanying Statement of Claim.

Capacity is crucial and therefore must be established for a party to successfully mount an action.

In the case of **Republic vs High Court, Accra, Ex Parte Aryeetey (Ankra) Interested Party, [2003-2004] SCGLR 398**, the Court held as follows:

"Any challenge to capacity therefore puts the validity of a writ in issue. It is a proposition familiar to all lawyers that the question of capacity, like the plea of limitation, is not concerned with the

⁴ See also the case of **Fosua & Adu-Poku v. Adu-Poku Mensah [2009] SCGLR 310**, Per Ansah JSC

"The Supreme Court considers the question of capacity in initiating proceedings as very important and fundamental and can have a catastrophic effect on the fortunes of a case".

Per Dotse JSC "Want of capacity is a point of law which, if raised, goes to the root of the action".

merits so that if the axe falls, then the defendant who is lucky enough to have the advantage of the unimpeachable defence of lack of capacity in his opponent, is entitled to insist upon his rights."

The Plaintiffs lack capacity presently to litigate over Mercedes Benz ML 320 and I so find. This has rendered the consideration of issue 6 of the additional issues that is the issue of limitation moot.

I shall now turn my attention to additional **issues 1 and 2** are as follows:

1. *"Whether or not Letters of Administration of the estate of the Late Nana Anterkyi Mensah were jointly granted to the customary successor, surviving spouse and surviving son respectively of the late Nana Anterkyi Mensah.*

and

2. *Whether or not the late Paul Boafo caused his name to be expunged as an administrator of the estate of the Nana Anterkyi Mensah.*

Additional issue 1 and 2 shall not engage the attention of the Court as there is no issue concerning them. Both Plaintiffs and Defendants admit that the deceased Paul Boafo applied to be removed as Administrator of the estate of the late Nana Anterkyi Mensah.

[6] Conclusion

Having reviewed all the evidence and taking into consideration my analysis above, it is my conclusion that the Plaintiffs have failed to adduce evidence to persuade the Court to grant the reliefs they seek. Consequently reliefs "a", "b", "c" and "d" endorsed on the Plaintiffs' Writ of Summons and accompanying Statement of Claim is dismissed.

Cost of GHC10,000.00 awarded in favour of the Defendants.

(SGD.)

JUSTICE EUDORA CHRISTINA DADSON (MRS.)

(JUSTICE OF THE HIGH COURT)