

IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT OF JUSTICE, HELD IN TEMA, ON THURSDAY THE 27TH DAY OF APRIL 2023 BEFORE HER LADYSHIP JUSTICE RITA AGYEMAN-BUDU (MRS.)

Time: 9: 54 am

SUIT NO: E1/005/2022

THE TRUSTEES OF CHURCH OF PENTECOST - PLAINTIFF

VRS

AMADU MOHAMMED - DEFENDANT

PARTIES:

Plaintiff Church represented by Guest Sena Akaho

Defendant - Present

LEGAL REPRESENTATION

Mr. Eric Asuman-Adu for the Plaintiff- Present.

Mr. Emmanuel Kumadey for the Defendant – Present

JUDGMENT

Per the writ of summons issued by plaintiff herein on the 18th of October, 2023 together with its statement of claim, Plaintiffs herein; The Trustee of Church of Pentecost are seeking the following reliefs:

- i) *An order nullifying any purported agreement entered into between the defendants and the children of the late Abudu Fuseini Balanka a.k.a Abudu kotontey in connection with the land in dispute.*
- ii) *An order for recovery of possession.*
- iii) *General damages for trespass*
- iv) *Perpetual injunction restraining the defendants, his agents, privies, assigns, and workmen from interfering with Plaintiff's interest in the property in dispute.*

Defendants herein Amadu Mohammed on the 6th of December 2021 entered a conditional appearance through his lawyer and subsequently on the 11th of January 2022 filed his statement of defence denying most of the averments in Plaintiff's Statement of Claim and also stating that plaintiff is not entitled to their claim.

Plaintiff

Plaintiff describes itself as a church registered under the laws of the Republic of Ghana. It is the case of Plaintiff that it obtained Judgment against one Abudu Konkontey a.k.a Abudu Fuseini Balanka at Ashaiman Circuit Court in respect of the disputed land. That, per the said Judgment it was declared the owner of a parcel of land situate at Ashaiman main market square measuring 217ft by 75ft by 8.5ft by 90ft by 12 ft by 125ft by 72ft and sharing boundary with the Ashaiman Market Square Methodist Church, the Ashaiman Circuit Court and the road in front of the Ashaiman Circuit court.

It is Plaintiff's contention that before it could go into execution the said Abudu Konontey a.k.a Abudu Fuseini Balanka (now deceased) issued a writ against the Plaintiff and subsequently obtained an injunction against Plaintiff herein at the Tema High Court in the case of **Abudu Fuseini Balanka vrs Trustees of Church of Pentecost (Chapel Square Assembly) Suit No.E1/179/2012**. That pursuant to the

grant of the injunction, the Plaintiff in the aforementioned suit has not taken any further action and thus stalling the matter for close to ten (10) years.

Plaintiff contends further that defendant has been seen on the land developing same and when questioned he claims he had swapped a house of his for the land in dispute with the children of Abudu Konontey the Plaintiff in the case of **Abudu Fuseini Balanka vrs Trustees of Church of Pentecost (Chapel Square Assembly) Suit No.E1/179/2012.**

It is Plaintiff's case that Defendant has trespassed on its land and also laying claim to the said parcel of land over which the Court has declared the Plaintiff as the owner. Plaintiff is praying the Court among his other reliefs, to compel the Defendants to vacate the said land as Plaintiff has both legal and equitable interest in the land in dispute.

Defendant

In his Statement of Defence filed on the 11th of January, 2022, Defendant herein Amadu Mohammed admits Paragraph 2 of the Statement of Claim which states that he is a business man.

He also admits paragraph 3 and 4 of the said statement of claim which state that Plaintiff herein obtained judgment in respect of the disputed land by the Ashaiman circuit court on 5th of July, 2011 but it is Defendant's case that the said Judgment affects only 8 x 30feet and not the entire land in dispute.

Defendant admits paragraph 5 of the Statement of Claim which states that before Plaintiff could go into execution, the said Abudu Konkontey a.k.a Abudu Fuseini (deceased) issued a writ against Plaintiff and obtained an injunction against Plaintiff. Defendant denies paragraph 6 of the Statement of Claim which is that pursuant to

the grant of the injunction, for close to ten (10) years, no further action has been taken in the said case.

Defendant admits Paragraph 7 of the Statement of Claim which states that he (Defendant) was seen on the land developing same and when questioned by Plaintiffs he claimed he had swapped a house for the land in dispute with the children of the late Abudu Fuseini Balanka a.k.a Abudu Konkontey.

Defendant denies that he has trespassed on Plaintiff's land. He further states that it is only 8 x 30 feet which is in contention in the Suit entitled **Abudu Fuseini Balanka vrs Trustees of Church of Pentecost (Chapel Square Assembly) Suit NO. E1/179/2012** the Defendants clearly marked the said 8 x 30 feet and same is left vacant awaiting the determination of the said suit.

Defendant denies that he trespassed on the said land and also denies that Plaintiff has legal and equitable interest in the said land. Defendants also denies not cooperating with the Ashaiman Divisional Police when they sought to settle the matter amicably. Defendant contends the Plaintiff is not entitled to its claim.

At the close of pleadings the issues set down for determination during the Application for Direction stage were;

- i) *Whether or not Judgment in respect of a parcel of land situate at Ashaiman main market square measuring 217ft by 75ft by 8.5ft by 90ft by 12ft by 125ft by 72ft sharing boundary with the Ashaiman Circuit Court (now Ashaiman District Court) and the road in front was entered in favor of plaintiff by the Ashaiman Circuit Court.*
- ii) *Whether or not only 8ft x 30ft or the said land was declared in favor of the plaintiff.*

- iii) Whether or not the said Abudu Fuseini Balanka vrs Trustees of Church of Pentecost (Chapel Square Assembly) Suit No. E1/170/2012 has stalled for ten (10) years.*
- iv) Whether or not Defendant has trespassed on Plaintiff's land.*
- v) Any other issues that might arise out of pleadings.*
- vi) Whether or not the Circuit Court Judgment dated 5th day of July, 2011 in the suit entitled Church of Pentecost vrs Abudu Konkontey Suit No. C1/04/2011 affects only 8 x 30ft of Defendant's Grantor's land or the entire Defendant's Grantor's Land.*

Issue 1:

Whether or not Judgment in respect of a parcel of land situate at Ashaiman Main Market square measuring 2/7 by 75ft by 8.5ft by 90ft. by 12ft. by 72ft. sharing boundary with the Ashaiman Circuit Court (now Ashaiman District Court) and the road in front was entered in favour of Plaintiff by the Ashaiman Circuit Court.

In the said Judgment which Plaintiff has attached as Exhibit B, it is the same disputed land herein, which was described therein and which same parcel of land was declared by the Court as belonging to Plaintiff herein. There is no evidence on record that the said Judgment has been set aside.

Plaintiff called two Witnesses Guest Sena Akaho and also PW1 Eric Abbo Mensah. Their evidence is basically corroboration of Plaintiff's position that the Judgment is in respect of the parcel of land described as situate at Ashaiman Main Market square measuring 217ft by 75ft by 8.5ft by 90ft by 12ft by 125ft by 72ft sharing boundary with the Ashaiman Circuit Court (now Ashaiman District Court) and the road in front was entered in favor of Plaintiff.

Issue 2

The issue of whether or not only 8ft by 30ft of the said land was declared in favour of the Plaintiff in the said Judgment.

In the Judgment, the Plaintiff's relief was granted, part of the Judgment reads:

"On the evidence before the Court it is clear the land described in the Writ of Summons as well as the Statement of Claim is for the Plaintiff Church".

It is instructive to note that the land described herein is in the relief;

a) "Declaration of land situate at Ashaiman Main Market Square measuring 217ft by 75ft by 8.5ft by 90ft by 12ft by 125ft by 72ft and share boundary with the Ashaiman Market Square Methodist Church, the Ashaiman Circuit Court and the road in front of the Ashaiman Circuit Court".

It is my considered opinion that the title of the parcel of land described above have been declared as belonging to the Plaintiff.

The Judgment also continues:

" Of the basics of this conclusion, the Court herein declares the Church as the owner of the land as described both in the Writ of Summons and the Statement of Claim. The evidence is also clear that the Defendant has trespassed unto the land by 8 by 30ft. The Plaintiff is to take immediate possession of the portion of the land".

Reading the Judgment holistically, it is clear that it is not only the 8 by 30ft. of Plaintiff's land which the Court granted title and possession but also the entire land described by Plaintiff as their relief "a" which is the land in dispute here.

In addressing all the other issues, it is my contention that from the evidence adduced the said suit **Abudu Fuseini Balanka vrs. Trustees of Church of Pentecost (Chapel Square Assembly) Suit No. E1/170/2012** has stalled. There is no evidence of proceedings going on in respect of same.

It is my considered opinion that Defendant herein has trespassed on Plaintiff's land.

I find as a fact that the Circuit Court Judgment dated **5th day of July, 2011** in the suit entitled **Church of Pentecost Vrs Abudu Konkonte Suit No. C1/04/2011** does not affect on 8 by 30 ft. of Defendant's Grantor's land but the entire Defendant's Grantor's land.

After analyzing all the evidence adduced in this trial and applying the relevant case laws as well as statutes, it is my considered opinion that Plaintiff herein; "The Trustees of Church of Pentecost" has established its case against the Defendant on the balance of probability and is therefore entitled to the reliefs sought which I will grant with modification. These are;

- i) *An order nullifying any purported agreement entered into between the defendants and the children of the late Abudu Fuseini a.k.a Abudu Konkontey in connection with land in dispute.*
- ii) *An order for recovery of possession.*
- iii) *General damages for trespass.*
- iv) *Perpetual injunction restraining the Defendant, his agents, privies, assigns and workmen from interfering with Plaintiff's interest in the property in dispute*

I hereby enter judgment in favor of Plaintiff and make orders as follows;

- i) *Exhibit (1)A Titled: Agreement of Exchange of Property, purporting to be an agreement entered between the Defendant and the children of the late Abudu Fuseini Balanka a.k.a Abudu Konkontey in respect of the land in dispute is nullified.*
- ii) *Plaintiff is further granted leave to recover possession of the disputed land which is situate at Ashaiman main market square measuring 217ft by 73ft by 8.5ft by 90ft by 125ft by 72ft and sharing boundary with Ashaiman market square , Methodist Church, the Ashaiman Circuit Court and the road in front of Ashaiman Circuit Court.*
- iii) *General damages for trespass: The Plaintiffs have also prayed for damages for trespass. I find from the record that no evidence was led in that direction for purposes of accessing damages.*
However, since they have been able to establish trespassory conduct on the part of the Defendant in respect of the disputed land as described in the statement of claim, I hold that they are entitled to nominal damages of Two Thousand Ghana Cedis (GH¢2,000.00).
- iv) *I further order that Defendant herein Abudu Mohammed, his agents, privies, assigns and workmen are restrained from interfering with Plaintiff's interest in the property in dispute.*

I award cost of Five Thousand Ghana Cedis (GH¢5,000.00) in favor of the Plaintiff herein against the Defendant.

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

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