

**IN THE HIGH COURT OF JUSTICE, WESTERN REGION, HELD AT SEKONDI  
ON THE 27<sup>TH</sup> DAY OF JUNE, 2023, BEFORE HER LADYSHIP AFIA N. ADU-  
AMANKWA (MRS.) J.**

**SUIT NO. E1/54/21**

**PAA KOW ASAMOAH ARTHUR**

**PLAINTIFF**

**VRS.**

**1. JOSEPH HENRY FYNN**

**1<sup>ST</sup> DEFENDANT**

**2. EBENEZER PARKER**

**2<sup>ND</sup> DEFENDANT**

**3. ERIC GODSAID AMOAH**

**3<sup>RD</sup> DEFENDANT**

**4. MR. GEORGE**

**4<sup>TH</sup> DEFENDANT**

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**JUDGMENT**

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By his writ of summons filed on 22<sup>nd</sup> January 2021, the plaintiff's claims against the defendants are for the following reliefs:

"a. Declaration of title to all that parcel of land described as Plot No. 13 at Ngyiresia-Essipon-Mpintsin measuring 2.8 acres.

b. Recovery of possession.

c. Damages for trespass.

d. An order of perpetual injunction restraining the Defendants, their agents, workmen, assigns and all persons claiming through the Defendants from committing any further trespass on the Plaintiff's land".

The plaintiff claims to bring this action for himself and on behalf of the children of his late father, Commander Samuel Asamoah Arthur. According to him, in 2004, his late father acquired the disputed land from the Abankyiwa Abiradze family of Ngyirasia-Shama through its head, Ebusuapanyin Anthony Effrim. The transaction

was evidenced by a lease agreement duly signed by ebusuapanyin Effrim, and the lease agreement was registered at the Lands Department. After the registration, his late father commenced a four-bedroom structure on a portion of the land but could not complete it until he died in 2018. He was in the United Kingdom when his father died. When he visited Ghana for his father's funeral, he saw that the defendants were developing portions of the land without his consent hence the present action against them.

The defendants have not denied putting up structures on the disputed land. According to them, they lawfully acquired the disputed land from the Abankyiwa Abiradze family of Ngyirasia. They contend that the plaintiff's father has no interest in the disputed land as he did not pay for the cost of the land nor register the disputed plots.

The following issues were adopted for resolution:

- i. Whether or not the plaintiff's father legally acquired the disputed land from the Abankyiwa Ebiradze family of Ngyiresia.
- ii. Whether or not the defendants have trespassed onto the plaintiff's land and developed same.
- iii. Any other issues arising from the pleadings and evidence.

The defendants failed to testify despite the opportunity given to them to do so. Therefore, this case is one-sided, consisting only of the plaintiff's evidence and his witness. Notwithstanding the failure on the defendants' part to testify, the plaintiff who seeks a declaration of title to land has to lead evidence in proof of his title. Such evidence must satisfy the only standard of proof required in civil suits, which is proof on the preponderance of probabilities. In civil cases, the general rule is that the party who, in his pleadings, raises issues essential to the success of his case assumes the onus of proof and proves his case on the preponderance of probabilities as per sections 10, 11 and 12 of the Evidence Act, 1975 (NRCD 323).

On the burden of proof in civil matters, Ansah JSC, in the case of **Takoradi Flour Mills vrs. Samir Faris [2005-2006] SCGLR 882 at 900**, held that:

*To sum up this point, it is sufficient to state that this being a civil suit, the rules of evidence require that the plaintiff produces sufficient evidence to make out his claim on a preponderance of probabilities, as defined in section 12(2) of the Evidence Decree, 1975 (NRCD 323). Our understanding of the rules in Evidence Decree, 1975 on the burden of proof is that in assessing the balance of probabilities, all the evidence, be it that of the plaintiff or the defendant, must be considered, and the party in whose favour the balance tilts is the person whose case is more probable of the rival versions and is deserving of a favourable verdict.*

Therefore, the law is settled that the party who bears the burden of proof must produce the required evidence of the facts in issue that has the quality of credibility for his claim to succeed. See the case of **Ackah vrs. Pergah Transport Limited and Others [2010] SCGLR 728**.

In proof of his claim, the plaintiff testified through his sister and attorney, Maame Efua Asamoah Arthur. She testified that in the lifetime of her late father, he acquired the land, the subject matter of this suit, from the Abankyiwa Abiradze family of Ngiresia-Shama through its head Ebusuapanyin Anthony Effrim in 2004. The disputed land measured one (1) acre and was situate at Mpintsin Ridge. The transaction was evidenced by a lease agreement signed by the said ebusuapanyin Effrim and his principal elders. According to the plaintiff's attorney, her late father registered the land in the plaintiff's name. He commenced a four-bedroom house on a portion of the land but could not complete it until he passed in 2018. At the time of her father's demise, the plaintiff was in the United Kingdom, and it was at this point the defendants started their acts of trespass on the land. When the plaintiff came to Ghana for his father's funeral, he went unto the disputed land and saw certain individuals developing portions of the land.

Investigations revealed that the defendants were developing the disputed land. Through his representatives, the plaintiff warned the defendants severally to stop their acts of trespass but was to no avail.

PW1, Asare Yeboah, the junior brother of the plaintiff's father, testified that the disputed land measured one (1) acre. He informed the plaintiff's late father that the plots of land in the area of the disputed land were up for sale. He was with the plaintiff's father during negotiations with the family and the land owners towards the sale and purchase of the disputed land and the payments he made. After the purchase, he was instrumental in registering the land in the plaintiff's name at the Lands Registry. After the purchase, the late Mr. Asamoah Arthur started constructing a four-bedroom house on a portion of the land though he did not complete it before he died. The structure was still on the land. At the time of Mr. Asamoah Arthur's death, the plaintiff lived outside the country. The defendants' activities were detected when he came to Ghana for his father's funeral. Several attempts to get them to stop their trespassory activities proved difficult, given that they were not on the land during the day when he visited. According to PW1, even though the head of the family at the time of the sale of the land had passed on, they reported the situation to the family, who assured them that the family had not sold any portion of Mr. Asamoah Arthur's land to anyone.

The plaintiff's attorney tendered in evidence as exhibits "A" and "B" a power of attorney authorizing her to testify on the plaintiff's behalf and the lease agreement entered into between the plaintiff's late father and ebusuapanyin Effrim, head of Abanyiwa Ebiradze family of Ngyiresia, Shama. These documents were admitted in evidence without any objection, given that the defendants were absent from court. Ordinarily, the court should consider these documents as long as they are in evidence. Unfortunately, both exhibits are unstamped, and exhibit "B" is unregistered as well and, therefore, inadmissible per se. Evidence is inadmissible

per se when a statute or law makes it inadmissible, and its inadmissibility is not founded upon a fact that the matter to be proved by that evidence had not been pleaded. See **In Re Okine (Decd); Dodoo & Another vrs. Okine & Others [2003-2004] SCGLR 582**. Evidence inadmissible per se includes unstamped documents and unregistered documents. The law makes them inadmissible even if the opposing party does not object. Section 32(6) of the Stamp Duty Act, 2005 (Act 689) states:

*“Except as expressly provided in this section, an instrument*

*(a) executed in Ghana, or*

*(b) executed outside Ghana but relating to property situate or to any matter or thing done or to be done in Ghana, shall except in criminal proceedings, not be given in evidence or be available for any purpose unless it is stamped in accordance with the law in force at the time when it was first executed.*

This Act requires documents such as Power of Attorney and lease agreements to be stamped before they can be admitted in evidence. A power of attorney is an instrument that requires stamping. In his book **“Trial Courts and Tribunals” at page 309**, the learned retired Supreme Court Judge and author Allan Brobbey wrote:

*“As a rule, the power of attorney should be stamped. Being a document requiring a stamp, it could not be received in evidence unless it has been stamped”.*

The lease agreement is also an instrument affecting land and must be stamped. As unstamped documents, exhibits “A” and “B” are inadmissible per se. As held in **Lizori Ltd vrs. Mrs. Evelyn Boye, School of Domestic Science & Catering [2013-2014] 2 SCGLR 889**:

*“Either the document has been stamped and appropriate duty paid in accordance with the law in force at the time it was executed or it should not be admitted in evidence. There is no discretion to admit it in the first place and ask the party to pay the duty and penalty after judgment. Thus the trial court would have been perfectly justified to reject the receipts without stamping”.*

Being inadmissible per se, the documents should not have been admitted in evidence in the first place. Therefore, they would not be considered as part of the evidence led on record. After all, where such evidence is received in the course of the trial (with or without objection), it is the duty of the court to reject such evidence when giving judgment, if not, the appellate court would reject it. This rule is founded on the fundamental principle that a court must arrive at its decision by relying on legal and admissible evidence and nothing less. See **Tormekpe vrs. Ahiable [1975] 2 GLR 432**. The evidence of the plaintiff's attorney is rendered void by the inadmissibility of the power of attorney and cannot be considered part of the plaintiff's case.

A lease agreement was exhibited to PW1's witness statement but was inadvertently struck out. The court notes have no record of it being struck out. In his witness statement, the witness did not allude to tendering this document, even though he alluded to the fact that he was instrumental in registering the land in the plaintiff's name at the lands registry. The exhibit was inadvertently struck out, and it is only fair that it be admitted into evidence. It is admitted into evidence and labelled as exhibit “C”.

In his writ, the plaintiff claimed declaration of title to a 2.8 acre land at Ngyiresia. However, the plaintiff's case is that the disputed land is one-acre. PW1 testified that the plaintiff's late father acquired a one-acre land from the Abanyiwa Ebiradze family of Ngyiresia in 2004. The plaintiff's description of the disputed land is inconsistent with his claim and pleadings regarding the disputed land. It is the

law that a plaintiff who institutes an action for a declaration of title to land, recovery of possession and injunction must establish by positive evidence the identity and limits of the land he claims. See **Agyei Osae & Ors vrs. Adjeifio & Ors [2007-2008] SCGLR 499**. This is to avoid the situation where the plaintiff may take advantage of the situation and extend the boundaries of his land. Also, if an order for injunction is violated, the person in contempt can be punished. The court's order would be in vain if the boundaries are not clearly ascertained. See the case of **Anane & others v. Donkor and Another (Consolidated) [1965] GLR 188**. As the plaintiff seeks a declaration of title to the 2.8 acre land, it is incumbent upon him to describe the disputed land. The proof need not be of mathematical precision. A plaintiff may provide a plan drawn to scale to establish the identity of his land. He may also call his boundary owners to establish his boundaries. Exhibit "C" is the lease agreement between the plaintiff and ebusuapanyin Anthony Effrim, head of Abankyiwa Ebiradze family of Ngyaresia-Shama. Exhibit "C" shows the site plan of the disputed land. A close scrutiny of this document shows that it is undated and uncertified by a licensed surveyor in compliance with section 3(1) of the Survey (Supervision and Approval of Plans) Regulations, 1989 (LI 1444) which makes it mandatory for plans of any parcel of land attached to any instrument to be approved by the Director of Survey or any official surveyor authorized by him. As held in **Nortey(No 2) vrs. African Institute of Journalism and Communication & Others (No 2) [2013-2014] 1 SCGLR 703 @ 717**, the non-compliance of this statutory requirement renders the exhibit of no probative value. Of importance to our discussion is the fact that the site plan fails to disclose the size of the disputed land. As a matter of fact, I cannot make meaning of the site plan, which has two sets of land on it and appears to be a composite plan. There is no indication which of the lands belong to the plaintiff, and the sizes of the lands have not been disclosed. This is fatal to the plaintiff's case, who claims a declaration of title to a 2.8-acre land yet describes the land as one acre. The inconsistency in the description of the land he seeks a declaration of title to is a failure on the plaintiff's

part to identify the disputed land. Again, his evidence is a marked departure from his pleadings, so his case should not be favourably considered. As held in **Mahama vrs. Issa [2001-2002] 1 GLR 94:**

*"A change in the version of an appellant between the statement of claim and the evidence is fundamental in nature "as not to be seen as a variation but a conflict in his case that has the effect of disintitling him to relief on the ground that he had departed substantially from his case and accordingly his case should not have been given a favourable consideration by the learned trial Judge".*

The plaintiff's action must fail without a clear description of the disputed land.

The plaintiff's case is dismissed.

**(SGD.)**  
**H/L AFIA N. ADU-AMANKWA (MRS.)**  
**JUSTICE OF THE HIGH COURT.**

**COUNSELS**

George E. Ansah appears for the Plaintiff.  
J. E. K. Abekah appears for the Defendants.