IN THE SUPERIOR COURT OF JUDICATURE, IN THE

HIGH COURT OF JUSTICE, HELD IN SEKONDI

ON TUESDAY, THE 16TH DAY OF MAY, 2023

CORAM: G. K GYAN-KONTOH 'J'

JUSTICE OF THE HIGH COURT

SUIT NO. E2/83/19

BETWEEN:

EMMANUEL SAMUEL ACQUAH ::: PLAINTIFF
H/NO. 41 NANA KOJO BENTUM STREET
LOWER SHAMA JUNCTION

VS

MR DANIEL ASEIDU NTRAM ::: DEFENDANT
ENOE - KOJOKROM.

1. **ROBERT KOJO ATTIBURA**
2. **ELLEN ATTIBURA ::: CLAIMANTS**

JUDGMENT:

BY A NOTICE OF CLAIM, the Plaintiffs herein, (then as the claimants) on 05/01/2021, claimed ownership of the property behind Anoe palace of Kojokrom, with GPS address

No. WS-220-8960 which has been attached in execution under Writ of Fieri Facias (Fifa) in Writ of Fifa No. 08/2020.

On 19/03/2021, the Defendants herein, (then as Plaintiff/Judgment Creditor) disputed the claim of the Plaintiffs as set out in the notice of claim and sought to contest same. On 04/05/2021, the Deputy Chief Registrar filed a motion ex-parte for an order for the claimant and the Execution Creditor to appear before the court under **Order 44 (12) of the High Court, (Civil Procedure) Rule, 2003, C.I 47.**

On 10/05/2021, the court differently constituted ordered the claimants, Robert Kojo Atibura and Ellen Atibura, both of H/No. 62/4, Ahinkofikrom near Sekondi and the Execution/Creditor Emmanuel Samuel Acquah to appear before the court on 18/05/2021 for the issue between them and the interpleader application to be determined.
On 02/06/2021, the Plaintiff herein filed an affidavit of interest claiming, amongst others that the attached property, as described hereabove is the bona fide property of his wife and himself having purchased same from Mr. Daniel Aseidu Ntram (the Defendant in the civil case) and his wife in November, 2018 for which the Plaintiffs herein have been living in same since December, 2018 after making some renovations to the property.

The Plaintiffs on 02/06/2021 appointed Portia A. N. Cheffah (Mrs) of Diaba, Diaba and Co. to represent their interest. Having complied with the order of the court and the procedure that followed, the case was set down for trial on 16/03/2022.

From the records, the Plaintiff filed his witness statement on 16/03/2022 and the Defendant herein filed his witness statement on 01/07/2021. On 16/03/2022, the Plaintiff testified and was cross-examined. On 08/06/2022, PW1 testified and was cross-examined.

On 04/07/2022, the Defence opened and the Defendant testified and was cross-examined. On 18/01/2023, the proceedings in the matter were adopted. It has to be pointed out, as

stated in any other cases in this court that this case, like many others, passed through the hands of four judges including the author of this judgment. It commenced during the time of P. Bright Mensah "J" (as he then was), through Justice Cynthia Wiredu, Justice Sedina Agbemava and now presently Justice G. K. Gyan-Kontoh completing the matter and delivering this judgment.

THE PLAINTIFF'S CASE:

It is the case of the Plaintiffs that he met PW1 who intimated to him of the sale of the Defendant's property (now in dispute) which was a property on a half plot but indicated that the property's indentures were only executed by the family as it was a half plot and so same could not be registered.

Upon being satisfied with the Defendants' documents on the property, the Plaintiff paid for same, then being a sum of GH¢20,000.00 as part payment and directed that the receipt be issued in the name of the 2nd Plaintiff who is the wife of the 1st Plaintiff and this was accordingly done and documents were exchanged.

According to the Plaintiff, upon the receipt of the amount, the Defendant gave him a receipt of payment and also a document from the family, being the grantors of the property to the Plaintiff.

According to the Plaintiff, as the building was then uncompleted, they did the plastering and other renovation before settling in the property. According to the Plaintiff, in June 2019, a court process was posted on the main entrance to the house which is Exhibit "D" being an order for substituted service as the house, was, before then, being occupied by the Defendant, in this case, (Ntram) then later, the court process of attachment was effected on the property and that he resisted it and filed the requisite processes as he claimed to be the bona fide owner of the property and not the Defendant.

According to the Plaintiff his property cannot be sold in satisfaction of any judgment debt against the Defendant (Ntram) for monies owed by the Defendant (Ntram) as the Defendant had no interest in the attached property.

PW1 also testified personally corroborating the evidence of the Plaintiff that he, being an Estate Agent, was approached by the Defendant, showed his property (now in dispute) to the witness of his desire to sell some for money to settle an urgent family issue for the burial of an in-law. According to PW1, the Defendant took the witness in his car and in arriving at the house of the Defendant, they both met the Defendant's wife who in turn confirmed that she was in agreement with the husband selling the house (now in dispute).

According to the witness, he conducted a search from the family being a stool and they confirmed the ownership of the half plot and the property thereon to the PW1. Besides the above, according to the PW1, he had earlier taken two (2) other persons to the house in an attempt at selling same for the Defendant. PW1 stated the Plaintiff paid GH¢20,000.00 to the Defendant through him in his office and the transaction was documented.

The Defendant opened his defence on 04/07/2022 and told the court that the house in dispute belonged to Mr Daniel Aseidu Ntram as he (Ntram) offered to sell same to the Defendant herein at GH¢20,000.00 in 2017 for which he the Defendant herein made a payment and that formed the basis of his action against Ntram for recovery of money being GH¢20,100.00 in court.

According to the Defendant, Ntram who is the owner had been living in the house before 2017 and when he threatened to sue him, he fled and he denied the house being sold to

the Plaintiff as he effected the court processes of substitute service on Ntram on the house in dispute as Ntram then lived in the disputed property.

DW1 corroborated the evidence of the Defendant herein and that he witnessed the Defendant paying for the house in dispute and that Ntram is only using the Plaintiff as a ploy to avoid the sale of the house to settle his debt to the Defendant (in this case).
DW2's evidence was generally a corroboration of the Defendant's evidence. From the nature of the matter before the court and since this being an interpleader action and the rules requiring same to be tried summarily, the issues that arise from the records are;

(1) *Whether or not Daniel Asiedu Ntram ever transferred his interest in the property attached.*

(2) *Whether or not the property in dispute belongs to any of the parties by virtue of any transfer of Daniel Aseidu Ntram.*

It is trite that and as has been held that,

> "It is when property had been attached normally under a writ of fifa that a person other than the Defendant, who claims an interest can interplead."

(1) **R v. H/Ct, Azera, Exp. Anyan (Platinum Holding interested party (2009) SCGLR 255;**

(2) **Hunu Akwei v. Suresh Sauhwani (2011) 39 GMJ 138, C.A**

And as it is well known in interpleader proceedings, it is the Plaintiff who has the burden of proving his title to the property attached to the same degree as the Plaintiff in a suit

for a Declaration of title – see the case of **HUNU AKWEI v. SURESH SADHAWANI (2011)39 GMJ 138, C.A**

2. It is also provided under order 44 of the High Court (Civil Procedure) Rules 2004, (C.I 47) (hereinafter) called C.I 47) as follows:

> **"(1) A person who makes a claim to or in respect of a property taken or intended to be taken in execution under process of the court, or to proceeds or value of any such property shall give notice of the claim to the Registrar and shall include in the notice a statement of that person's address for service."**
>
> **"(2) On receipt of a claim made under sub rule (1), the Registrar shall forthwith give notice of it to the execution creditor who shall within four days after receiving the notice, give notice to the Registrar informing the Registrar whether the execution creditor admits or disputes the claim."**

Further, **Ord 44 r13 (1)** thereof provides as follows:

> "(1) Where on the hearing of proceedings pursuant to an order made under rule 12(4) all the persons by whom adverse claims to the property in dispute, in this rule referred to as the "claimants" appear, the court may;
>
> (a) Summarily determine the question in issue between the claimants and execution creditor and make an order accordingly on such terms as may be just; or
>
> (b) Order that any issue between the claimants and the execution creditor be stated and tried and may direct which of them is to be Plaintiff and which Defendant."

From the records, the above provisions under the rules of court were duly complied with.

BEFORE, I delve into the issues raised, it has to be noted that, on evidence there is a standard of proof required in matters like the case in point SS 10, 11, 12 and 14 of the Evidence Act 1975 (NRCD 323) actually deal with the standard of proof to be produced by a party which generally is on the balance of probabilities. There are also a plethora of decided cases in support of the above provisions which include the following:

(a) Odametey v. Clocuh & anr (1989-90) 1 GLR 14 SC, (Holding 1)

(b) Awuku v. Tetteh (2011) 1 SCGLR 366 (Holding 1)

(c) Mendial Veneer (GH) Ltd v. Armah Gyebu XV (2011) 1 SCGLR 466, (Holding 4)

(d) Ackah v. Pergah Transport (2010) SCGLR 728

I do agree with Counsel for the Defendant and indeed it is the law that it is only the property of a Judgment/Debtor that can be sold in satisfaction of a judgment.

From the records, it is not in dispute that the property in dispute is an attached property as a result of a judgment. From the records, it is also not in dispute that the attached property belonged to Daniel Aseidu Ntram.

Both parties concede that indeed the attached property belonged to the Defendant/Judgment Debtor (Daniel Ntram) sometime ago. Both parties admitted in their respective evidence/case that the property once belonged to Daniel Aseidu Ntram. And comfortably relying on the authority of **IN RE ASHAILEY BOTWE LANDS; ADJETEY AGBOSU v. KOTEY & ORS (2003-2004) 1 SCGLR 420** which has held that when an adversary admits a fact, there is no need to lead any further evidence on it.

To buttress the above, the records also show that both parties trace their respective roots of title to Daniel Aseidu Ntram (hereafter called "Ntram"). The records also do provide that indeed, the property in dispute was once possessed by Ntram who used to live in same house with his family. This is evidence as both parties concede.

The above leads to the irresistible conclusion that the property in dispute once belonged to Ntram. Having concluded upon the above therefore, I venture to discuss the issues, with issues 1 AND LEADING to issue 2 (to be treated together).

On "WHETHER OR NOT DANIEL ASEIDU NTRAM (NTRAM) EVER TRANSFERRED HIS INTEREST IN THE PROPERTY; AND TO WHO, it has to be noted that the Defendant in this case was the Plaintiff in the previous case. The Defendant challenged the claimants' position on the acquisition of the property in dispute. The Defendant tendered witness statement and same was adopted as his evidence-in-chief.

Paragraphs 3, 4 and 5 of the Defendant's evidence-in-chief is worth being produced here for ease of reference.

> *"3. The house in dispute belongs to the Defendant/Judgment Debtor. I know this as a fact because in 2017, the Defendant attempted selling the house and plots of land to me which I paid GH¢20,100.00. In fact that was the basis of my action against him for recovery of money being GH¢20,100.00."*
>
> *"4. The Defendant/J/Debtor had been in possession of the said house and had been living in it before 2017 when I decided to buy it and afterwards continued to live there. It was when I threatened to sue him that he fled from the house."*
>
> *"5. It is never true that the house in dispute had been sold to the claimant herein by the Defendant/J/Debtor. The Defendant/*

J/Debtor is merely using the claimant to avoid the sale of the house to settle his indebtedness."

From thee above, it is clear that as far back as 2017, Ntram had intimated that he wanted to sell the disputed house to which the Defendant expressed interest in same. Towards that the Defendant contends that he made a part payment of GH¢20,000.00 and it was the refusal/failure of Ntram to have concluded the deal that he issued a writ for the recovery of his GH¢20,100.00 from Ntram.

Also, from the evidence of the Defendant, he never got Ntram to serve him with the court process personally save substituted service until he obtained judgment. Furthermore, the following cross-examination of the Defendant will clarify matters on the title and transfer of Ntram in so far as the property now in dispute is concerned.

Cross-examination of the Defendant by Counsel for the Plaintiff;

Q: This means that the transfer of the property to you never happened from the Defendant/Judgment Debtor?

A: It is correct because I did not finish payment for it.

Q: Did the Defendant/Judgment Debtor mention the value of the Disputed Payment to you at the time you wanted to purchase same?

A: Yes. He did. It was twenty thousand cedis (GH¢20,000.00) and I paid GH¢10,000.00 to him.

Q: Did the Defendant/Judgment Debtor show you any document which indicated that the disputed payment belonged to him?

A: He did not show me any document but he was living in the house with his wife and children. I know the house belongs to him.

Q: Since 2017, you have not seen the Defendant/Judgment Debtor in the house in dispute?

A: I have not seen him since December 2018 and neighbours around told me he left in October 2018.

My understanding of the totality of the Evidence of the Defendant is that Ntram sought to sell his property including the disputed property to him but it did not go through in 2017. He never saw Ntram again and only found out that the attached property had been sold by Ntram for which he is disputing the sale to the Plaintiff.

Paragraphs 3, 4, 5, 9, 10, 11, 12, 13, 14, of the Evidence-in-chief of the Plaintiff is of some relevance to the case. Gleaning from it, the Plaintiff got to know Ntram's property through an Estate Agent (PW1). It is a notorious fact of what Estate Agents do in present day Ghana – rentals and sale and purchase of properties.

According to the Plaintiff, after paying GH¢20,000.00 to Ntram, he was directed to pay the remaining GH¢8,000.00 to the Estate Agent (DW1) which he did. According to the Plaintiff, the premises was not complete and so he completed same and now living in same with his family.

The evidence of PW1 (Andrew Nkansah Boahen) really saved the Plaintiff. PW1 is an Estate Agent and he narrated how he came into contact with Ntram, his introduction to Ntram's family and wife, inspection of the disputed property and inspections by others in an attempt to buy same even before the Plaintiff bought same, the purchase price, the

time of purchase and the present location of Ntram in Accra. PW1 tendered in evidence Exhibit "A" being the Certificate of Registration of his Estate Agency. PW1 actually corroborated the evidence of the Plaintiff as he being the bridge between the property for sale, its inspection, its search on title, root of title, bargaining and finally the completion of payment.

The cross-examination of the Defendant actually corroborates and confirms the evidence of PW1 on the sale of the property. The Defendant's evidence was that in 2017, Ntram told him that he wanted to sell his house. It was the evidence of PW1 who then led people including the Plaintiff to bargain with Ntram. Both PW1 and the Defendant agree that the property was on a half plot.

The question below brings out PW1's evidence as a neutral and unbiased witness on the subject thus:

Q: The disputed property has at all material times been owned by the Defendant and he has not executed any deed of transfer to anyone?

A: It is not true. Defendant sold the property to the Claimant. It was priced at Thirty Thousand Cedis (GH¢30,000.00). Claimant paid Twenty Thousand Cedis (GH¢20,000.00) on the spot and Defendant issued a receipt to the Claimant. He asked me to collect the balance payment of Eight Thousand Cedis (GH¢8,000.00). We also agreed that he should go to the court to execute a document to that effect and we will all sign the document when he paid the remaining balance.

The above piece of evidence from PW1 sums up the case of the Plaintiff. All the documents referred to in PW1's evidence and cross-examination were tendered in evidence but rejected on Technical and Legal Grounds.

S. 7(1) of the Evidence Act (NRCD 323) on corroboration provides as follows:

> **"7(1) Corroboration consists of evidence from which a reasonable inference can be drawn which confirms in a material particularly the evidence to be corroborated and connects the relevant person with the crime, claim or defence."**

It has also been stated that it is not the multiplicity of witnesses which establishes a fact in issue but the qualitative value of the evidence led. This is the position held in the cases of;

a. **AYIWA v. BUDU [1963] 1GLR 86, SC.**
b. **TAKORADI FLOUR MILLS v. SAMIR FARIS [2005-2008] SCGLR 882, @ 885(Holding 3)**

c. **The views of Appau JSC in DUODU-SAKYIMA v. TEMA DEVELOPMENT CORPORATION [6/06/2016] C. A. NO. J4/25/2015.**

PW1, an unrelated but committed person, ready to do his work as an Estate Agent and committed to be honest provided an unbiased evidence for a party deserves a great commendation for all honest persons to emulate as PW1's evidence was, to my mind corroborated by both the Plaintiff and the Defence. I am fortified on the principle on corroboration of;

a. **MANN v. NSIAH [2005-2006] SCGLR 25.**
b. **YAKUBU v. YAKUBU [2013] 55 GMJ 97.**

The Plaintiff testified that after the purchase of the disputed property, there were some works on it to be done and so he did some maintenance including plastering before

moving to stay in the premises with his family. The Defendant on the other hand informs the court that Ntram was already in possession and he used to live in it around 2017 and before he went incommunicado.

The fact is that the Plaintiff and his family have been living in the property ever since Ntram moved out of the premises. This means that the Plaintiff has since 2018 been exercising acts of ownership as he possesses the property.

The law is that a person who exercises acts of ownership over property is presumed to be the owner of it. Also, it is the law that the things which a person possess are presumed to be owned by that person. See S. 48 (1) & (2) of the Evidence Act, (NRCD 323). It is also the law that a person in possession of a thing has good title to the property against the whole world save the true owner.

Again, per the Defendant cross-examination above where he conceded that Ntram never actually made any transfer in respect of the attached property to him amounts to admission in my view. Admission in our legal jurisprudence has weight, implications and consequences. On the authorities, it is trite that where an adversary has admitted a fact advantageous to a party's cause, that party need not provide any better evidence to support that fact than by relying on such admission.

Since the Defendant has conceded that Ntram indeed offered to sell the attached property to him together with other plots but that Ntram never actually transferred interest in same to him is so clear enough to find out from that in whose favour some interest and transfer were effected and in this case the Plaintiff. See **IN RE ASARE STOOL; (2005-2006) SCGLR 637** and **POKU v. ADUSEI (2018-2019)1 GLR 306 @ 388, Holding 4** and **S. O. Ablakwa & anr v. J.O Lamptey & ors (2013-2014)1 SCGLR 16** where it was held thus:

"Where a matter is admitted proof is dispensed with."

Also in **FYNN v. FYNN (2013-2014) SCGLR 727 at 738**, it was held thus:

> "**There cannot be any better proof than the adversary admitting a fact in contention."**

In this case, PW1 who, has been described in this judgment as a neutral estate agent through whom the Plaintiff obtained the attached property has been a living witness to all the transaction and processes including documentations that were effected and exchanged for the Plaintiff.

The evidence is that PW1 had to take the remainder of the GH¢8,000.00 of the purchase price of the property and send same to Ntram. This actually corroborated the Plaintiff's evidence.

Admission has been defined as "**a voluntary acknowledgment of the existence of facts relevant to an adversary's case**." The importance of admissions lies in the fact that the court can act on them without proof of the facts constituting the admissions.
From the above, therefore. I find that Daniel Aseidu Ntram transferred his interest in the attached property before saying goodbye to Sekondi Takoradi where he and his family left in 2018 and has never returned to the premises.

This issue leads me to the next issue as to whether or not the property in dispute belongs to any of the parties by virtue of the transfer by Daniel Aseidu Ntram. Having established that Ntram did transfer his interest in the attached property before relocation to Accra, we now have to ascertain to whom really the property belongs.

And having already delved so much into issue 1 supra, I may not need to repeat the same evidence in this issue as same may seem verbose. There is no a finding that Ntram has disposed of the property at least from this judgment.

According to the evidence, the Defendant states that Ntram sought to sell the attached property to him but failed. And it is for that reason he sued Ntram for his money. The Defendant also concedes in cross-examination that Ntram never transferred the property to him. But the Plaintiff's evidence is that through PW1 who is an estate agent, he went to inspect the attached property, showed interest in it, made searches as to Ntram's title, got convinced, bargained and eventually agreed on the amount at GH¢28,000.00 for which he made a part payment of GH¢20,000.00. He testified that as the property was not complete, he completed same and took possession of same with his family and also paid the remaining GH¢8,000.00 to Ntram who had by then relocated and had earlier instructed PW1 to collect same and transfer same to him.

As between the two parties on the preponderance of probabilities and on the authorities of:

a) **ODONKOR v. AMARTEI (1992) 1 GLR 577, S.C**

b) **TUAKWA v. BOSOM (2001-2002) SCGLR 61, S.C, the** Plaintiff has made a case to win the favour of this court in so far as the case is concerned. This court finds that the Plaintiff completed payment and possessed the property but the Defendant did not. This was admitted by the Defendant in cross-examination thus:

Q: This means that the transfer of the property to you never happened from the Defendant/Judgment Debtor?

A: It is correct because I did not finish paying for it.

Q: Did the Defendant/Judgement Debtor mention the value of the disputed property to you at the time you wanted to purchase same?

A: Yes. He did. It was twenty thousand (Gh¢20,000.00) and I paid GH¢10,000.00 to him.

By the above evidence of the Defendant, he has corroborated the case of his adversary as earlier stated in this judgment.

From the Defendant's evidence, the decision of Ntram seems quite consistent with the Plaintiff's case of selling the property and relocating to a different place since 2018. Incidentally also, this is the position of PW1 (the Estate Agent) who spearheaded the sale and purchase agreement. The court thus finds that even though the Plaintiff title documents on the attached property were rejected by the court for technical reasons, the Plaintiff seems to have proven by Ss. 10, 11, 12 of the NRCD 323 on the preponderance of the probability and has therefore won the confidence of the court in relying on the Plaintiff's evidence to decide the case for him..

Also, since the Defendant himself conceded that Ntram sought to sell the Disputed home to him long before the Defendant instituted an action against Ntram for recovery of his money, it cannot be correct, as supported by the Defendant, that Ntram and the Plaintiff colluded to make sure that the attached property was never auctioned.

I finally find and hold that the Plaintiff is entitled to the relief claimed. The attached property being property with Digital Address (GPS Address No. WS – 220 - 8960) which has been attached should be discontinued as against the property herein described. The property, by the evidence, is for the Plaintiff.

There is no order as to cost.

SGD

G.K. GYAN-KONTOH 'J'

JUSTICE OF THE HIGH COURT

COUNSEL:

1. **J. E. ABEKAH FOR THE PLAINTIFF/JUDGMENT/CREDITOR**
2. **ARABA SIKA ABAIDOO FOR PORTIA CHEFFA (MRS) FOR CLAIMANT.**