

IN THE SUPERIOR COURT OF JUDICATURE IN THE HIGH COURT OF JUSTICE HELD AT TEMA ON MONDAY THE 31ST DAY OF JULY 2023 BEFORE HER LADYSHIP JUSTICE RITA AGYEMAN-BUDU (MRS)

Time: 9:40 am

SUIT NO: TC 01/2019.

1. HARRISON OCANSEY NUMO

... PLAINTIFFS

2. CEPHAS LARWEH NUMO

VRS:

1. MISS AKUTU ADUSU

... DEFENDANTS

2. EMMANUEL TETTEH KABU OTIBOE

PARTIES

Plaintiffs- Absent

2nd Defendant – Present and representing the 1st Defendant

LEGAL REPRESENTATION

Mr. Edmund Amako for the Plaintiffs - Present.

Mr. Winston Hayford holding brief for Mrs. Grace Opokua Addai for the Defendants - Absent.

JUDGMENT

Per an amended Writ of Summons and Statement of Claim filed by Plaintiffs herein;
1st Plaintiff, Harrison Ocansey Numo, 2nd Plaintiff Cephas Larweh Numo against

Defendants Miss Akutu Adusu (1st Defendant) and Emmanuel Tetteh Kabu Otiboe (2nd Defendant).

On the 15th November, 2017, Plaintiffs claim the following reliefs:

- a) *A declaration of title to all that piece or parcel of land lying and situate at Big Ada in the Ada District in the Eastern Province of the Gold Coast Colony and bounded on the North by a footpath and Kudjragbe tribal land measuring 800 feet more or less on the South partly by river measuring three hundred and ninety five (395.0') more or less and partly by property of Wornor Tetteh Apeyisi measuring five hundred and sixty-four feet (564.0') more or less and on the west by Kudjragbe land measuring six hundred feet (600.0') more or less comprising an area of 14.51 acres.*
- b) *Punitive damages against the Defendants for willful trespass on the disputed property which forms part of the Estate of the late Alfred Numo by demolishing a fence wall of about a mile long and excavating portions of the land.*
- c) *Perpetual Injunction restraining the Defendant, their assigns, agents, workmen, representatives or persons however deriving title under them from interfering with the disputed property now or in the future.*
- d) *Costs.*

Plaintiffs case

Plaintiffs herein are the administrators of the late Alfred Numo, their deceased father.

The said Alfred Numo acquired a freehold interest of 14.51 acres of land from the Kudjragbe tribe of Big Ada on the 6th August, 1946 and was issued with an Indenture marked as "*Exhibit C*" and the said land is situate and lying at Big Ada District in the then Eastern Province of the Gold Coast Colony and bounded on the North by footpath and Kudjragbe tribal land and measuring Three Hundred and Ninety-Five

feet (395.0') more or less and partly by the property of Wornor Tetteh Apeyii measuring Five Hundred and Sixty-Four feet (564.0') more or less on the East by the Volta river measuring Eight Hundred feet (800.0') more or less and on the West by Kudjragbe land measuring Six Hundred feet (600.0') more or less.

It is Plaintiffs' contention that after their late father acquired the land, he took possession of the land and built a dwelling house on the land and used part for farming.

It is Plaintiffs' case that the land in dispute has since been registered at the Land Registry with **Certificate No. TD13813 Vol. 27 Folio 57 dated 17th May, 2017** marked as *Exhibit D*.

It is the contention of Plaintiffs' that the total acreage of the land registered with the Land Registry increased to 18.51 acres. That the increase is due to the fact that the Volta River has gradually reclined over the years to the benefit of the Estate of the Late Alfred Numo increasing the total acreage by four (4) more acres to the original acquisition of 14.51 acres making a total of 18.51 acres.

Plaintiffs contend that their attention was drawn to the excavation works taking place on about seven (7) plots of their late father's estate. Plaintiffs further contend that the illegal occupation and the construction by the Defendant compelled the Administrators of the Estate of the Late Alfred Numo to sue the Defendants to protect that interference.

Defendants case

Defendants contend that the disputed land was acquired by the late father of the 1st Defendant herein Eric Auguadze Adusu in 1974 from the Kudjragbe family of Ada under a Deed of Conveyance dated the 8th of August, 1974. After the conveyance of the disputed land to the 1st Defendant's father the Kudjragbe Clan immediately put the late father into possession and control of the disputed land where upon 1st Defendant's late father exercised unhindered and unchallenged right of ownership

over the disputed land until his death and same devolved onto his beneficiaries, personal representatives who also continued to exercise unchallenged right of ownership on the disputed land.

The 1st Defendant herein in 2013 instituted a legal action; **Suit No. A1/12/13** at the **Ada District Court** against one Joshua Adusu in respect of a dispute involving the disputed land to protect the interest of the beneficiaries/ personal representatives to her father's estate on 11th February, 2015, final Judgment of the Court declared title and ownership of the disputed land in favour of the Plaintiff therein and 1st Defendant herein. The Judgment was in respect of the inherited two (2) plots of land.

1st Defendant, together with one of the lawful representatives of the Agwadze Family of Ada conveyed the two (2) plots of land to the 2nd Defendant.

It is the case of the Defendants that for a period in excess of twelve (12) years prior to the commencement to this suit the Defendants have collectively been in uninterrupted occupation, control and possession of the two (2) plots.

At the close of proceedings the following issues were set down for trial;

- a) *Whether or not the land in dispute belongs to the Plaintiff.*
- b) *Whether or not Plaintiffs are therefore entitled to recovery of possession.*
- c) *Whether or not the purported registration of the disputed land by the Plaintiff has any validity.*
- d) *Whether or not the purported registration of the disputed land by the Plaintiffs ought to be postponed in favour of the title conferred on the 2nd Defendant by virtue of the final judgment of the District court, Ada.*
- e) *Whether or not the disputed land has at all material times been under the exclusive unchallenged and unhindered possession, management and control of the Defendants.*
- f) *Whether or not the 2nd Defendant's rights and inchoate interest in the said disputed land are entitled to protection.*

- g) Whether or not the 2nd Defendants has substantially improved and developed the quality and commercial value of the disputed land and erected a fence wall around same.*
- h) Whether or not the Plaintiffs are estopped by laches and acquiescence and precluded from asserting any claim of right over the disputed land and from denying 2nd Defendant's right and interest in the disputed land.*
- i) Whether or not any claim over the disputed land being asserted by the Plaintiff is statute-barred by virtue of the provisions of the limitation decree 1972 (NRCD 54).*
- j) Whether or not the Defendants are in any event entitled to relief and protection under the provision of the Lands Development (Protection of Purchase Acts 1960 (Act 2).*

Issue 1 is Whether or not the land in dispute belongs to the Plaintiff. Plaintiffs' assertion is that the land in dispute belongs to their father Alfred Numo's Estate and they are the Administrators of the Estate.

It is their case that the Late Alfred Numo acquired a freehold interest of 14.51 acres for the Kudjragbe tribe of Ada but due to the reclination of the Volta River which benefited the Estate by 4 acres, the total acreage became 18.51 and same is captured on the Land Certificate issued in relation to the Estate of the Late Alfred Numo.

This is **Land Certificate No. T.D. 13813 Vol. 027 Folio 57 dated 17th May, 2017 (Exhibit D).**

Defendant's case is that after obtaining Judgment on the two (2) plots of land conveyed same to 2nd Defendant.

Plaintiffs are saying that 1st Defendant did not obtain Letters of Administration as she has admitted in Court that their late father did not leave a will.

Plaintiffs are raising the issue of capacity of 1st Defendant. In his Address, Counsel for Plaintiffs cited the case of **Re-Appeal (Deed) Apau vrs Ocansey (1993-1994) 1GLR** where it was held by the Court of Appeal that;

“ The general rule was that since an Administrator derived his authority entirely from the appointment of the Court, a party who was entitled to admin could not do anything as an Administrator before letters of Administration was granted. The Court further went on to say that a person who merely took possession of or administration or administration of the estate or asset of a deceased person was liable to intermeddling so long as the person was not an administrator”.

Plaintiffs assertion is that 1st Defendant’s purported conveyance was not to the 2nd Defendant but someone else.

During Cross-examination of 1st Defendant by Counsel for Plaintiffs, this ensued;

Q: Paragraph 7 of your Witness Statement you said you conveyed the said property to the 2nd Defendant Emmanuel Tetteh Otiboe is that correct?

A: Yes.

Q: Take a look at Exhibit AA3 can you tell the Court the name of the person you conveyed the property to?

A: I have not given my land to the name on Exhibit AA3.

It must be noted that the names on Exhibit AA3 which is an Indenture are stated as between Victoria Akutu Adusu and Richard Kofi Adusu and Christian Kofi Okomanyi.

When 1st Defendant asked his further,

Q: Can you tell the Court the acreage of the land you leased out?

A: I do not know anything about this document AA3.

Q: Can you tell the Court the acreage of the land you leased?

A: The land measured 100x100 (I don't know how they call it).

Q: When you took your so called lease to the land, did you take a surveyor to the land?

A: I used the Site Plan my father gave to me before leasing the land to 2nd Defendant.

Q: So if you used the Site Plan of your father's Indenture who prepared yours for you?

A: I do not have any Site Plan.

Q: Take a look at Exhibit AA3, the Site Plan in the document you tendered?

A: I do not know anything about this document (Indenture) and Site Plan.

Q: They are all part of the Witness Statement that you signed?

A: I gave the land to 2nd Defendant and that whatever happened later I don't know anything about it.

Q: Did you read the Witness Statement prepared by your lawyer before you signed?

A: Yes I read it.

Q: Are you illiterate?

A: Yes.

Q: At Paragraph 3 of your Witness Statement, you said Judgement was entered at the District Court Ada?

A: Yes.

Q: How long have you been on the land after the demise of your father?

A: Since 1974.

Q: When did your father die?

A: He died in the year 2006.

Q: I am putting it to you that you do not have any interest in any part of land of the late Alfred Numo.

A: I have a piece of land in the area which does not belong to Alfred Numo.

Q: Are you talking about the piece of land that you don't even have a Site Plan?

A: I have Site Plan covering that piece of land.

Q: On the Site Plan what is the size of the land?

A: It is 100 feet by 200 feet.

Q: The land you are claiming on Plaintiffs land is more than what you are telling the Court?

A: The size of the land on the Site Plan is what I have stated to the Court and that is what I have, has been to my father.

This Cross-examination has been very insightful.

It is very clear from **Exhibit ETK1** Site Plan that the Kudragbe family conted land to the late Alfred Numo which land shared boundary with 1st Defendant's father.

Thus, what I find incontrovertible is that 1st Defendant has not been able to demonstrate to this Court that the disputed land is the land she claims belongs to her late father.

She is depending on the Judgment of the District Court and Counsel for 1st Defendant in her address state that in the Judgment, reference was made to a Surveyor and so this lends credence to the fact that the land was surveyed during trial and which argument I do not find convincing.

During Cross-examination of the Surveyor by Counsel for Defendant this ensued which I deem quite intriguing.

Q: From your Composite Plan, the land in dispute D1,D2, D3 and D4 falls outside the land as shown on Site Plan for Alfred Numo?

A: The land as shown for Mr.Alfred Numo is P1, P2, P3 and P4.

Q: I am referring to the third item on the legend which reads "land as shown on the Site Plan for Mr . Alfred Numo" does the disputed land fall outside the land as shown on the composite plan?

A: Yes.

Q: Your composite plan took into consideration the two site plans as attached to the survey instructions filed by the Defendant on the 10th of May, 2021 is that correct?

A: A point of correction, the Exhibit 1 which is in the same name of E.A Adusu is an old plan which does not have coordinates and it is unplottable.

I must also state that during cross-examination of the Surveyor by Counsel for Plaintiff, this also ensued among others;

Q: On your composite Plan, you indicated that the area shown by the Plaintiff representative marked P1, P2, P3 and P4 and edged red can you tell this Court what this means?

A: The land surveyed as shown by representative of the Plaintiff as indicated P1, P2, P2 and P4 and edged red is the boundary shown to me on the ground.

Q: So it is just by pointing the coordinates to you and you surveyed same, is that the position?

A: They are points being shown on the ground but not coordinates.

Again, when asked by Counsel for Plaintiff:

Q: From D1,D2, D3 and D4 which is the disputed area, the plan submitted by the Defendant falls only within part of the disputed land is that correct?

A: Yes.

Q: Can you tell the Court taking into consideration the Site Plan submitted by the Defendants why the site hole hatched area is in dispute?

A: The point surveyed and showed to me on the ground by Plaintiff marked P1, P2, P3 and P4 superimposed on the points shown on ground and surveyed by Defendants marked D1, D2, D3 and D4 shows that the area in dispute is the portion hatched.

From what is deduced from the cross-examination, it seems to me that Defendant is claiming more than the size of the land as shown on their Site Plan.

Having said this, I will revisit the issue of documentation exhibited by parties in support of their claim.

Plaintiffs are relying on their Exhibit A which is Letters of Administration which same was amended per Court Order and stating the names of Plaintiffs herein as Administrators of the Estate of the Late Alfred Numo.

I do not have any doubt about the authenticity of this document Exhibit B series as Court processes supporting the said Exhibit A. Exhibit C is an Indenture 6th August 1946 between Wornor Tetteh Apeyisi and Alfred Numo (late father of Plaintiffs).

Exhibit D is Land Title Certificate and Site Plan dated 30th May, 2017 which bears the name of Alfred Numo.

The extent of the said land is stated as 18.065 acres more or less.

This addition of 4 acres of land added to the original size of 14.5 acres of land of Plaintiffs land has been explained by Plaintiffs as due to sea reclamation 1st Defendant has also attached.

Exhibit EKT1 which is an Indenture dated 8th August, 1974 between Picco Pediator III and Eric Aguedje Adusu (Ist Defendant's father) **Exhibit AA2**, Judgment of the District Court Ada dated 11th February, 2015, **Exhibit AA3** which is an Indenture between Victoria Akutu Adusu and Richard Ofori Adusu and Christian Kofi Okomanyi dated June 2017.

It is also interesting to note that 1st Defendant during Cross-examination denied any knowledge of Exhibit AA3 even though it is her own Exhibit and some bears her name.

1ST Defendant is relying on the District Court Judgment which Judgment went in her favor. The area described is as follows:

On one side by the property of E.N Adusu measuring 100 feet more or less. On another side by the property of Alfred Numo Mesuring 200ft more or less. On the third side by the property of Kudzragbe tribal land measuring 100ft more or less and on fourth side by the Volta River measuring 200ft more or less.

Counsel for Defendant in her address states that this area is the disputed land and has been already declared by the District Court in its Judgment as Plaintiffs being the owners. Counsel for Plaintiffs arguments is that Plaintiffs were not Parties in the District Court suit and also in the Judgment, it is stated that the land described shares boundary with the late Alfred Numo.

This fact was strangely enough disputed by 2nd Defendant during cross-examination.

Q: Which part of the land which was purportedly leased to you shared boundary with the late Alfred Numo, Plaintiff's father?

A: We do not share boundaries with Alfred Numo.

The Judgment clearly states that the 1st Defendant's land shares boundary with the land of the late Alfred Numo, Plaintiff's father.

From the evidence adduced it seems to me that the evidence adduced by Plaintiffs of their ownership of the disputed land is more probable than that of the Defendants.

The Kudzragbe family lease agreement which was between them and 1st Defendant's father shows as per "Exhibit ETK1" that the grant conveyed shared boundary with late Alfred Numo land and thus having made a finding that the Plaintiff's claim is more probable than that of the Defendants in respect of the disputed land and that Defendants have clearly trespassed thereon, I find that the disputed land part of which has been the subject matter in the Judgment of the District Court, belongs to Plaintiff.

Having determined the second issue of whether or not Plaintiff are entitled to

recovery of possession follows that Plaintiffs are entitled to recovery of possession and hereby granted them same.

On the issue of whether or not the purported registration of the disputed land by the Plaintiffs has any validity.

The fact is that Surveyors of the Lands Commission went to the land to resurvey the land based

on the site plan and released the size of the land which is captured on the cadastral plan.

If the extra 4.5 acres added by the desilting of the Volta River has benefited the Plaintiffs and same is captured, I do not see any invalidity as same.

Thus, I hold that the registration of the disputed land is valid. The issue of whether or not the purported registration of the disputed land by the Plaintiffs ought to be postponed in favor of the title conferred on the 2nd Defendant by virtue of final Judgment of the District Court.

I am of the view in as much as Plaintiffs were not Parties in the District Court suit, the second Judgment, considering the circumstances of this case, I will say is not necessarily binding on the Plaintiffs.

Issue (d) which is whether or not the purported registration of the disputed land by Plaintiff ought to be postponed in favour of the title conferred on the 2nd Defendant by virtue of the final Judgment of the District Court, I will look whether or not the registration is valid and whether or not the said Judgment is binding on the

Plaintiffs.

I have already indicated and made finding that the registration of the extra 4 acre land by Plaintiffs is valid and also from the circumstances of this case I do not deem the Judgment of the District Court as binding on the Plaintiffs.

In **Agbeshie & Anr vrs Amorkor and Anr(J4/35/2007) (2009) GHASC2(11**

February, 2009). *“It was held at, it well settled under the rule of estopped that if a court of competent jurisdiction has tried and disposed off a case the party themselves and their privies cannot thereafter bring and action on same claim or issue”.*

In the instant suit, Plaintiffs herein are not parties to the suit. On the remaining issues which includes;

Whether or not the disputed land has at all material time been under exclusive,

unchallenged and unhindered possession , management and control of the

Defendant.

Whether or not Plaintiffs are estopped by Laches and acquiescence and precluded from asserting any claim of right aver the disputed land and from denying the 2nd Defendant’s rights and interests in the disputed land.

Whether or not any claim over the disputed land being asserted by the Plaintiffs is statute barred by virtue of the provisions of the limitation decree 1972(NRCD 54).

Whether or not the Defendants are in any event entitled to their reliefs and also protection under the Provisions of the Lands Development (Protection of Purchase Act 1960 (Act2).

I will address them as having stemmed from the ownership of the disputed land which I have made a finding as Plaintiff being the owners of the said land which Defendants have rather trespassed on part of it.

In his address to this court, counsel for Plaintiffs submits 2nd Defendant is not an innocent purchaser of the said disputed property.

That 2nd defendant had notice of Estate of the late Alfred Numo in the site plan which shows that the 1st Defendant's late father shares boundary with the late Alfred Numo. Counsel submits that for Plaintiffs to be estopped by laches and acquiescence the conditions laid down in Nii Boi vrs Adu 196 GLR 410 must be satisfied:

- (1) That the person who enters upon another's land must have done so in honest but erroneous belief he has a right to do so.*
- (2) He should have spent money in developing the land.*
- (3) The actual owner must be aware of this person's entry upon the land.*
- (4) His mistaken belief which is inconsistent with the ownership.*
- (5) He should have fraudulently encouraged the development of the land by not call the attention to the error.*

It is Counsel for Plaintiffs' submission that for them to be estopped by laches the conditions stated above should have been proved but from the evidence, these have not been proven by Defendants. Counsel contends that the land has been bare except an L shape dwarf wall.

On the issue of whether Plaintiff are statute barred by provision of limitation Decree 1972 NRCD54 counsel's argument is that 1st Defendant's father's grant was in 1974 which was in respect of 100 ft by 200 ft and that it was after the District Court

judgment in 2015 that 1st Defendant granted her interest to the grantee and so Plaintiffs are not statute barred.

I find this argument tenable. In all these issues, a most important condition which should be mentioned here is capacity of 1st Defendant herein. She does not have the requisite mandate to deal with the estate of her late father.

She has not exhibited any letters of administration making her the administratrix of her father's estate. In view of this, I will say that she lacks capacity to deal with her late father's estate. She went to court without capacity and obtained Judgment without capacity.

Decision

The Court, after analysing all the evidence adduced and after applying the relevant statutes and case laws, it is my considered opinion and I make a finding that Plaintiffs herein Harrison Ocansey Numo and Cephas Laweh Numo are entitled to the reliefs sought.

I hereby enter Judgment for Plaintiffs herein.

I also hold that Defendants are not entitled to their Claim on the disputed land. I grant the following reliefs in favour of Plaintiff:

“Relief a” A declaration of title to all that piece or parcel of land lying and situate at Big Ada in the Ada District in the Eastern Province of the Gold Coast Colony and bounded on the North by a footpath and Kudjragbe tribal land measuring 800 feet more or less on the South partly by river measuring three hundred and ninety five (395.0') more or less and partly by property of Wornor Tetteh Apeyisi measuring five hundred and sixty-four feet (564.0') more or less and on the west by Kudjragbe land measuring six hundred feet (600.0') more or less comprising an area of 14.51 acres.

“Relief b” is granted since from the evidence adduced Defendants have trespassed on Plaintiffs land and have demolished a fence wall of about a mile long and excavating portions of the land.

For the Defendant’s trespassory conduct, Plaintiffs have not led any evidence in accessing the damages, I however hold the view that they are entitled to nominal damages of Five Thousand Ghana Cedis (GH¢5,000.00).

“Relief c” which is Perpetual Injunction restraining the Defendant, their assigns, agents, workmen, representatives or persons however deriving title under them from interfering with the disputed property now or in the future is granted.

“Relief d” I award cost of Ten Thousand Ghana Cedis (GH¢10,000.00) in favour of Plaintiff and against the Defendants.

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