

**IN THE SUPERIOR COURT OF JUDICATURE
IN THE HIGH COURT OF JUSTICE SITTING AT KOFORIDUA
ON TUESDAY 30TH DAY OF APRIL, 2024 BEFORE
HER LADYSHIP JUSTICE GIFTY DEKYEM (MRS.)**

SUIT No. C7/07/2019

MOHAMMED ALHASSAN

PLAINTIFF

VS

ISSAH BASHIRU

DEFENDANT

PARTIES:

COUNSEL: K Amoako Adjei ESQ. for Plaintiff

Bernard Fianu Nyarvor ESQ. for Defendant

JUDGMENT

Per the writ of summons and statement of claim filed 5th March 2019, Plaintiff sought the following reliefs:

- i. An order of the Honourable Court declaring that the activities of the defendant over the properties of the late Mariatu Bashiru constitute intermeddling in law.
- ii. An order that the Plaintiff is the rightful person to apply for letters of administration to administer the estate of the late Mariatu Bashiru.

- iii. Perpetual injunction restraining the defendant, his agents, assigns, privies, and all who claim through him from interfering with the estate of the late Mariatu Bashiru.
- iv. An order(s) the Honourable Court may deem fit and proper.

Per Plaintiff's statement of claim, he got married to the younger sister of Defendant on 5th June 2016 under Muslim law at Nsutam. The couple cohabited at Nsutam. The plaintiff averred that after the marriage, his wife took ill resulting in her death and medical attention sought for his wife strained the couple's finances. The plaintiff averred that before their marriage, his deceased wife had an uncompleted building at Paradise, Nsutam which he helped his wife to complete before his wife's sickness intensified. It is the case of the Plaintiff that following the death of his wife the Defendant has annexed the building, taken over of his wife's belongings including her store at Nsutam, and sacked the Plaintiff from the building. It is the Plaintiff's case that he contributed significantly in putting up the building in particular and he is entitled to the building as the surviving spouse of his deceased wife.

Defendant filed a defence and counterclaim on 4th April 2019. Defendant generally denied Plaintiff's claim. Defendant, however, admitted that on 5th June 2016, Plaintiff married his younger sister under Muslim Law and the couple cohabited at Nustam after the marriage but not in the house in dispute. Defendant also admitted that before the marriage Plaintiff's wife had an uncompleted building at Paradise, Nsutam but added that the building was already completed before the marriage. Defendant contended that the medical expenses incurred during the illness of Plaintiff's wife who was Defendant's sister were largely borne by him and the money spent by Plaintiff in respect of his wife's illness was the latter's money. Defendant contended also that the deceased had already completed the building which is on family land and therefore Plaintiff did not in any way

contribute to the construction of the said building thus he is not entitled to the reliefs he sought. The Defendant counterclaimed for the following reliefs:

- a. A declaration that the entire action of the Plaintiff is frivolous, vexatious, improper, incompetent, without any merit, and not maintainable.
- b. A declaration of title to all that piece of land with building appurtenant situate, lying, and being at Nsutam in favour of the Defendant.
- c. An order of Perpetual injunction against the Plaintiff, his successors, assigns and privies, and all those who rightfully claim through them.
- d. Legal Fees and costs.

At the application for directions, although ten issues were listed, eight out of the ten issues were settled for trial as follows:

1. Whether or not the house in dispute was the property of the late wife of the plaintiff, Mariatu Bashiru?
2. Whether or not the plaintiff single-handedly took care of his late wife during her sickness?
3. Whether or not the plaintiff did all the finishing in the house?
4. Whether or not the act of the defendant of dealing with the properties of the late Mariatu Bashiru without taking Letters of Administration constitutes intermeddling in law?
5. Whether or not the plaintiff is the proper party to apply for Letters of Administration to administer the estate of the late Mariatu Bashiru.
6. Whether or not the plaintiff is entitled to his reliefs?
7. Whether or not the defendant is entitled to his reliefs?
8. Any other issue(s) disclosed by the pleadings.

The following sections of the Evidence Act, 1975 (NRCD 323) provide for the burden of proof in civil cases as follows:

SECTION 10 – BURDEN OF PERSUASION DEFINED

- (1) For the purposes of this Act, the burden of persuasion means the obligation of a party to establish a requisite degree of belief concerning a fact in the mind of the tribunal of fact or the Court.
- (2) The burden of persuasion may require a party
 - (a) to raise a reasonable doubt concerning the existence or non-existence of a fact, or
 - (b) to establish the existence or non-existence of a fact by a preponderance of the probabilities

SECTION 11 – BURDEN OF PRODUCING EVIDENCE DEFINED

- (1) For the purposes of this Act, the burden of producing evidence means the obligation of a party to introduce sufficient evidence to avoid a ruling on the issue against that party.
- (4) In other circumstances the burden of producing evidence requires a party to produce sufficient evidence which on the totality of the evidence, leads a reasonable mind to conclude that the existence of the fact was more probable than its non-existence.

SECTION 12 – PROOF BY A PREPONDERANCE OF THE PROBABILITIES

- (1) Except as otherwise provided by law, the burden of persuasion requires proof by a preponderance of the probabilities.
- (2) “Preponderance of the probabilities” means that degree of certainty of belief in the mind of the tribunal of fact or the Court by which it is

convinced that the existence of fact is more probable than its non-existence.

It was held in *Takoradi Flour Mills v Samir Faris* [2005-2006] SCGLR 882 at 884, that:

It is sufficient to state that 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). 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 the more probable of the rival versions and is deserving of a favourable verdict.

There being a counterclaim, both parties are obligated to adduce the required evidence in proof of their respective claims on a preponderance of the probabilities as defined in section 12 (2) of NRCD 323. The plaintiff testified at the trial without calling any witnesses. Defendant testified and called two witnesses namely Alhaji Abubakari Sadik Mohammed as DW1 and Danso Okrah Daniel as DW2. A Court-appointed surveyor who prepared a composite plan for the parties was also subjected to cross-examination.

Evidence of the Plaintiff.

Plaintiff testified that he got married to his late wife on 5th June 2016 and a month later she fell ill. Plaintiff testified that his late wife continued to be unwell intermittently until her demise at the Regional Hospital, Koforidua on 8th September 2018 and was buried the next day. He exhibited a Mortuary Request and Assessment Form as exhibit "A". Plaintiff testified that when he met his deceased wife, the latter had just completed roofing the disputed property and had plastered portions of it. The plaintiff stated that following their marriage, he finished plastering the building and fitted windows and

doors. The plaintiff testified that due to his wife's illness, he and his wife gave a room in the house to the wife's friend Emma Gyandah, and put her in charge of his wife's shop. Plaintiff stated that he single-handedly financed all the medical bills of his wife, took care of the home, and also injected some capital into the wife's business. Plaintiff testified that whilst he was away seeing to the funeral and burial arrangements of his late wife, the defendant annexed the building, drove out Emma Gyandah, ransacked his belongings, and took away his GHS800.00 but a report to the wife's family for redress yielded no result.

Plaintiff testified that he reported the conduct of the Defendant to the Domestic Violence Unit of the Police Service but the Defendant refused to cooperate with the Police. Plaintiff testified that although the disputed house was their matrimonial home because most of his work contracts were in Koforidua and his wife's shop was at Nsutam, he rented a small place at Koforidua to cut costs on transportation and the couple spent time between these two abodes during the weekends or holidays. Plaintiff maintained that the land on which the disputed house stood was not family land. He furthered that his wife applied to the then Nsutam Chief, Nana Barima Gyahene Kokoo II for a plot of land which was granted her. The plaintiff attached a copy of the application letter his wife wrote in this regard as Exhibit "B", the site plan covering the land as Exhibit "C" and a receipt as Exhibit "D".

The plaintiff testified that when his late wife commenced building the disputed property, the Fantekwa District Assembly wrote to her to produce her building permit. The plaintiff's wife thereafter reported to the District Assembly to obtain a building permit. In support of this assertion, Plaintiff attached exhibit "E" titled NOTICE FOR BUILDING PERMITS AND UNAUTHORIZED BUILDINGS dated 10th April 2016 and addressed to 'The Developer'. The plaintiff also tendered the building plan of the house in the name of his deceased wife, Mariatu Bashiru as Exhibit "F" dated July 2014. The plaintiff reiterated that the disputed house was never a family property. He testified that his wife

commenced the construction of the disputed house and he completed it. The plaintiff prayed that his reliefs be granted.

Defendant's evidence

Defendant testified that in July 2007, he, his sister the late Mariatu Bashiru (deceased wife of the Plaintiff), and his brother Nasiru Bashiru together bought a plot of land from Nana Britwum (deceased) through the Nsutam Unit Committee nine years before his sister got married to the Plaintiff. He tendered exhibits '2a' and '2b' being an application letter for a building plot and receipt respectively to show the acquisition of the plot of land in dispute. It is the case of the Defendant that he and his above-named siblings acquired properties together. He tendered a Land Sales Agreement in their joint names to prove this assertion as Exhibit '3'. Defendant testified that the three of them contributed to the construction of the disputed house in various cash amounts and in the form of building materials purchases. To this end, Defendant tendered exhibit '4' series being some thirty receipts with various dates in 2019 in the name of Defendant totaling GHS23,803.50. Defendant also testified that after the death of his sister, they continued with the construction of the house including tiling, plumbing works, and a manhole among others which he paid for the workmanship. Defendant gave the following names and telephone numbers as persons they engaged to build the house as follows: Mason Isaka (0551736975), Carpenter Koranteng Joseph who roofed the house (0248295686), and Glassman Sammy (0243659238).

Defendant testified that following the demise of his sister, there was a meeting between their family and Plaintiff's family. The Plaintiff had alleged that he thought the disputed property was for his late wife so he expended money on it. Minutes of the said meeting dated 3rd January 2019 (exhibit '6') concluded that Plaintiff was to furnish the meeting with details of the expenses he made on the disputed house for a refund as his wife's

family maintained the disputed property was not solely owned by Mariatu Bashiru but owned by the three siblings. Defendant contends that it is Plaintiff who must pay to his deceased's wife family the dowry of GHS2,000.00 he took back from his late wife when he had a gas explosion accident and GHS2,000.00 he took from his late wife's shop assistant during the ill-health of his late wife.

Defendant testified that the house was completed in February 2019 through rental advance paid by two prospective tenants namely Mr Ranhtkumar Raghukumar and Mumuadu Rural Bank Ltd who paid GHS18,000.00 and GHS21,000.00 respectively. The tenants moved into the property on 14 February 2019 and May 2019 respectively. Defendant attached exhibits '7a', '7b', and '7c' as tenancy agreement between Defendant and Mr Raghukumar, tenancy agreement between Defendant and Mumuadu Rural Bank and, Ghana Revenue Authority Tax Credit Certificate respectively. Defendant contended that at no point did Plaintiff and his deceased wife live in the disputed property as the couple lived in Koforidua following their marriage so Plaintiff cannot claim that the disputed property was their matrimonial home. Defendant also contends that contrary to Islamic custom, Plaintiff has refused to return the belongings of his deceased's wife to the latter's family after her demise. Defendant attached a list of the late Mariatu Bashiru's belongings in the possession of Plaintiff as exhibit '8'. Items listed in exhibit '8' include pieces of cloth, cooking utensils, traveling bag sets, Islamic veils, buckets, plates, gas cooker, and eating bowls.

Evidence of DW1, Alhaji Abubakar Sadik Mohammed

DW1 testified that Mariatu Bashiru was his niece whom he gave her hand in marriage to the Plaintiff on 5th June 2016. He stated that about three months into the marriage, Mariatu fell ill and eventually died on 8th December 2018 without recovering. He said the couple lived in Koforidua. He testified that Defendant and his siblings bought the disputed land

together in 2007 and commenced construction and roofed the house in or about 2010, six clear years before Plaintiff married Mariatu.

DW1 testified that following the demise of Mariatu and the claims made by the Plaintiff, a meeting was convened at the instance of the Zongo Chief, Alhaji Bature on 3rd January 2019. At the meeting, Mallam Rabiwu, who was the spokesperson for the Plaintiff's family from Koforidua submitted that it is the case of the Plaintiff that the Plaintiff thought the disputed house and store belonged to his deceased wife, that was why he spent money on those projects like tiles, windows, lighting, ceiling, plumbing works, T&G, Plywood and 20 bags of cement. DW1 stated that even though he did not believe the assertions of the Plaintiff, he requested the Plaintiff to submit a bill of his expenditure on the building for a refund if the bill is found to be acceptable. It is DW1's case that Plaintiff did not accept that proposal and he initiated the instant suit. DW1 who was the spokesperson for Defendant's family made it clear at the meeting that Defendant had not taken anything from Plaintiff but rather it is Plaintiff who took GHS2,000.00 from his wife being the money he had paid as his wife's dowry. Again, when Mariatu was unwell, the Plaintiff took GHS2,000.00 from Mariatu's shop assistant. It is the case of DW1 that the Plaintiff owes the amounts of money he collected to the family of his late wife.

DW1 testified that Defendant and Nasiru were able to complete the house in early 2019 when they received rent advances from Mr Kumar and Mumuadu Rural Bank. DW1 maintained that the house was constructed by the three siblings without any input from Plaintiff as he wanted the court to believe and urged the court to grant Defendant's counterclaim.

Evidence of DW2, Danso Okrah Daniel

DW2 testified that he was a former Assembly Member of Nsutam who sold his farm land to Defendant and his two siblings namely Nasiru Bashiru and Mariatu Bashiru. He testified that the application for land purchase has to be recommended by the Chairman of the Plot and Development Committee and approved by the Chief of the area. DW1 stated that in his capacity as the Chairman of the Plot and Development Committee, he recommended the Defendant's and his siblings' application for purchase of land to be approved by the Chief of the area in July 2007. He attached copy each of the application letter and receipt of payment for the land as exhibits '9' and '10'. DW2 testified that the disputed land is situated at Nsutam at a place called Bene. He furthered that the land is 100 by 80 feet and shares boundaries on the west with Opanin Kwaku Nkansah, on the south with Opanin Kofi Missah, on the east with Kofi Adu and on the north with Bawa Salifu. DW2 stated that members of the Plot Allocation and Development Committee were Nana Obeng, J. K. Darteh, David Wiafe Asante as members and he, DW2 as the Chairman. DW2 tendered a letter dated 22nd October 2019 signed by each of the Plot Allocation and Development Committee members as exhibit '11' confirming the sale of the land to the Defendant and his siblings. DW2 testified that he is aware that Defendant and his siblings went to see Nana Britwum Gyan Korkoor II (deceased) who gave approval for the sale of the land to the three siblings in the presence of his Queen Mother, Nana Ago II, Nsutam Hema. DW2 tendered a letter dated 24th October 2019 and authored by Nana Ago II confirming the sale of the land to the three siblings as exhibit '12'.

ISSUES 1 AND 3

Whether or not the house in dispute was the property of the late wife of the plaintiff, Mariatu Bashiru? The plaintiff contended that the disputed property was the property of

his late wife. The plaintiff must adduce sufficient evidence in proof of his assertion. The plaintiff testified that his late wife applied to the then Nsutam Chief, Nana Barima Gyahene Kokoo II for a plot of land, and the same was approved and granted her per exhibit 'B'. In proof thereof, Plaintiff tendered exhibits 'B', 'C', 'D', 'E', and 'F'. Exhibit 'B' is an application for a building plot authored by Mariatu and dated 17th January 2008 but without an addressee. Exhibit 'C' is a site plan in the name of Mariatu Bashiru dated 10th June 2014. Exhibit 'D' is an official receipt dated 28th January 2008 from the Nsutam Unit Committee acknowledging receipt of GHS350.00 from Mariatu Bashiru in respect of one building plot. It has been indicated in exhibit 'D' that it is valid for one year. Exhibit 'E' is a Notice for Building Permits and Unauthorized Buildings' dated 5th April 2016 from the Fantekwa District Assembly addressed to 'The Developer' and not to a particular person. Exhibit 'F' is a proposed plan for a six-bedroom residence for Mariatu Bashiru dated July 2014.

The Supreme Court held in *Nana Amua Gyebu XV vs. Mondial Veneer (Gh) Ltd* [2010] DLSC2519 that:

the law requires the person asserting title, and on whom the burden of persuasion falls, as in this instant case, to prove the root of title, mode of acquisition, and various acts of possession exercised over the subject matter of litigation. It is only where the party has succeeded in establishing these facts on the balance of probabilities, that the party would be entitled to the claim.

The onus is the Plaintiff to adduce evidence to show the root of the title his deceased wife had, the mode of acquisition, and various acts of possession. The plaintiff was cross-examined as follows:

Q22 I am putting it to you, you do not know the person who sold the land to your wife because she never told you so.

A22 My Lady I do not know the owner of the land but my wife told me that she bought the land from a woman.

DW2 was cross-examined as follows:

Q169 I again suggest to you that the land could not have been yours as the defendant has told this court that they acquired the land from Nana Britwum and (not) you Danso Okrah Daniel

A169 My Lady I would like to explain. The plots in Nsutam belong to individuals, and after agreeing to sell it to an interested person, the person will have to write an application letter through the Plot Allocation Committee to the Chief whether the Chief would approve. After the approval, you therefore pay to the individual and a receipt given by the Plot Allocation Committee by the instructions of the Chief who would later make an Indenture for the purchaser.

The mode of acquisition of Nsutam lands was explained by the DW2 under cross-examination in A169. Although the lands belonged to individuals, they sold same through the Plot Allocation Committee with the approval of the Chief. Plaintiff was unable to state the name of his wife's vendor. From A22 above, Plaintiff could therefore not trace the root of his late wife's title to the land. He did not know from whom his late wife bought the land in dispute. The exhibit 'D' was seriously impugned when DW2 was cross-examined as follows:

Q171 You would agree with me that the issuance of exhibit 'D' means the named buyer on that document has satisfied all the requirements of land acquisition in Nsutam as per your previous answer.

A171 My Lady that is so, the handwriting on the receipt is my handwriting on the receipt but the signature is not mine. Again, it is not the Plot Allocation

Chairman that issues receipt, it is rather the Financial Secretary. My Lady the Financial Secretary served from 2006 to 2010, his name is Charles Ofofu Danso. It is only the Financial Secretary that has the authority to issue receipt.

Q172 Look at exhibit 'D', exhibit 'D' is a receipt from the Nsutam Plot Allocation Committee, is that correct?

A172 My Lady that is what I said is not so.

Q177 Can you tell the Court who authored exhibit 'D' among the Executives?

A177 My Lady I do not know

The exhibit 'D' which would have been evidence of payment of land in the Nsutam area was not only impugned but 'valid for one year'. No evidence was led to explain why there was a validity limit on the receipt. The Court concludes that the Plaintiff has failed to establish the acquisition of the disputed land.

In his witness statement, Plaintiff sought to prove that he was in possession of the disputed property when he testified in his witness statement that:

Paragraph 13: Because of my late wife's illness, she was unable to ply her trade so I and my wife gave my wife's friend called Emma Gyandah a room in the house and also put her in charge of the shop.

Paragraph 17: Whilst I was away and seeing to the funeral and burial arrangements, the defendants annexed the building, drove out Emma Gyandah and ransacked my belongings. In the process, they took GHS800.00 belonging to me.

Paragraph 21: it is not true that the house was not our matrimonial home. Because whereas most of my contracts were in Koforidua, my wife's shop was at Nsutam so I rented a small place in Koforidua to cut down on transport costs. However, I will always go to Nsutam or my late wife would come to Koforidua during weekends or holidays.

The testimony of the Plaintiff was scrutinized under cross-examination as follows:

Q5 Before the marriage and throughout the period that you married her she was living in a rented accommodation at Nustam is that correct?

A5 Yes My Lady it is true

Q32 You say in paragraph 13 that because of your wife's illness, you got her friend a room in the house and put her in charge of the shop, which room are you talking about and in which house are you referring to?

A32 My Lady it was the single room that my wife and I were staying that my wife's friend came to stay and I moved to the new building when my wife wasn't feeling well

Plaintiff crumbled under cross-examination when it emerged that Emma Gyandah did not stay in the disputed property but stayed in the rented room that the Plaintiff's wife lived in at Nsutam throughout the period that she was married to the Plaintiff. The Plaintiff's assertion in A32 that he moved to the new building when his wife was not feeling well was an afterthought and failed to convince the Court that the Plaintiff and or his late wife were in possession of the disputed house as their matrimonial home at any point in time during their marriage.

The plaintiff testified in his witness statement regarding the construction of the disputed house as follows:

Paragraph 11: When I met my late wife, she had just finished roofing the house in dispute and plastered some portions too.

Paragraph 12: After we got married, I finished off the plastering and fitted the windows and doors.

Paragraph 25: When my late wife commenced building, the Fantekwa District Assembly wrote to her to produce her building permit following which she had to report at the District Assembly to obtain the building permit. Attached is a copy of the stop notice marked as exhibit 'E'.

The Plaintiff's story is that when he met his late wife, the latter had already constructed and roofed the disputed property but does not state when he met his late wife. The plaintiff was subjected to cross-examination as follows:

Q36 You say in paragraph 25 of your witness statement that when your wife commenced her building the Fantekwa District Assembly issued her with a stop notice, is that correct?

A36 My Lady it is true, at the time the Assemblyman led my wife to buy the land the place was not developed. The Assemblyman advised my wife to start building that was in 2016 and later the Fantekwa District Assembly realized that the place was developing quickly they gave her notice to stop building.

Q37 Exhibit 'E' does not address that letter to any particular person, it is not true that this was addressed to your wife.

A37 My Lady according to the receipt my wife showed me that was given to her by the Fanteakwa District Assembly that was written after she made part payment and thereafter she was given a letter. The one who gave the exhibit 'E' added his phone numbers.

From the above, the Plaintiff seems to suggest that his late wife commenced construction of the disputed house in 2016 when the Assemblyman advised her to start building. According to Plaintiff following the commencement of the construction of the building, his late wife was served with exhibit 'E' dated 10th April 2016. Plaintiff also testified that when he met his late wife she had roofed the building and plastered some portions without stating when he met her. Assuming Plaintiff's late wife commenced construction of the building per the advice of the Assemblyman in January 2016 and the couple met on their wedding day of 5th June 2016, then the late Mariatu single-handedly constructed the six-bedroom house, roofed it, and plastered portions of it at a lightning speed of five months and a few days. Without further evidence to show how she was able to construct a six-bedroom house within five months when her occupation was the operation of a provision store leaves doubts in the mind of the Court. The Court is not convinced that the late Mariatu single-handedly constructed the disputed house and will so hold.

Plaintiff also testified that after they got married, he finished off the plastering of the building and fitted the windows and doors. Under cross-examination, this is what the Plaintiff said:

Q44 Can you show this Court evidence of building materials that you purchased and also evidence of how much money you put in the building?

A44 My Lady before my wife died I used to keep all the documents with me and three days after her death, the lady I made the caretaker of the house together with my wife's siblings went into the building and took all the

documents including receipts regarding the building away. I went to the Police Station to report this act to them; the matter is still at the Police Station pending.

Q45 It is not true that the defendant took any document, what you are telling this court is an afterthought, you do not have any document to support your claim of purchase of building materials.

A45 My Lady I have one or two documents that I can show to the court and they are with me in Koforidua, but the bulk documents were what they took away. Because she was my wife, there were certain things that I closed my mind on but I kept a few of the receipts that could bear witness of the building materials I bought.

Q47 After your wife's death was there ever any attempt by the leaders of the Muslim Community to settle this matter amicably between the two parties?

A47 My Lady that is true. It is true because after my wife's death, my in-laws started arguing with me and the leaders of the Islamic Community tried to settle this issue but I told them that it was my wife that I wanted the matter to be settled in accordance with Muslim custom.

Q48 At the meeting the elders asked you to submit a list of all the expenditures you have made on the building, is that correct?

A48 My Lady after my wife died the elders asked me to submit a list of the expenditures I have made on the building and that is true.

Under cross-examination, the Plaintiff testified that, despite the defendant and others taking the bulk of his documents evidencing the building materials he bought, he kept a few receipts which were with him in Koforidua but he did not place them before the

court. Again when both families of the parties met, Plaintiff was requested to submit a list of the expenditure he claimed to have made on the building but he failed to provide any such list. The court will conclude that Plaintiff did not place those receipts evidencing the purchase of building materials he bought towards the building because he did not purchase any materials and those receipts did not exist. The Court in the absence of any evidence to show that the Plaintiff contributed to the construction of the disputed property by purchase of building materials, is not convinced that the Plaintiff contributed as he is claiming. Plaintiff has failed to discharge the burden he assumed when he asserted that the disputed property belonged to his late wife and he contributed to the finishing of the construction of the house.

In light of the above, the Court hereby rules that the disputed property is not the property of Plaintiff's late wife and Plaintiff did not do all the finishing in the house as he wanted the court to believe.

ISSUE 2

Whether or not the plaintiff single-handedly took care of his late wife during her sickness. As none of the parties is seeking any relief as a result of having taken care of the late wife of the Plaintiff, the determination of issue of 2 will be of no consequence. The Court will therefore not waste its time to determine that issue.

ISSUE 4

Whether or not the act of the defendant of dealing with the properties of the late Mariatu Bashiru without taking Letters of Administration constitutes intermeddling in law? Plaintiff alleged that Defendant is dealing with his late wife's properties without taking

letters of administration when he averred the following paragraphs in his statement of claim:

Paragraph 10. Upon the death of the plaintiff's wife the defendant herein annexed the said building and sacked the plaintiff from same.

Paragraph 11: The defendant also took over all the properties and belongings of the plaintiff's late wife.

Paragraph 13: The plaintiff says that his wife was a trader and the defendant has also forcefully taken over her store situate at Nsutam in the Eastern Region.

In his testimony, the only evidence adduced by the Plaintiff concerning the above allegations under issue 4 is found in paragraph 17 of his witness statement as follows:

Paragraph 17: Whilst I was away and seeing to the funeral and burial arrangements, the defendants annexed the building, drove out Emma Gyandah, and ransacked my belongings. In the process, they took GHS800.00 belonging to me.

The Court has already ruled on paragraph 17 of Plaintiff's witness statement that the house was not the matrimonial home of the couple and they were never in possession of same. The issue of whether or not the Defendant sacked the plaintiff from the disputed house as alleged in paragraph 10 of the statement of claim does not therefore arise. No evidence was led by Plaintiff in his witness statement to show that Defendant took over all the properties including a shop belonging to Plaintiff's late wife. The Defendant was cross-examined thus:

Q67 Do you know any woman called Emma Gyanda?

A67 Yes My Lady

Q68 Who is she?

A68 She was a friend to my sister

Q71 You drove out the said Emma Gyanda from the house in dispute after the death of your sister, not so?

A71 No My Lady

Q108 Have you or any of your family members obtained Letters of Administration to administer the estate of your late sister?

A108 My Lady I cannot tell because we have a family head.

No evidence was adduced to ground an inference that Defendant was intermeddling in the estate of Plaintiff's late wife. Plaintiff has thus failed to prove that Defendant is an executor *de son tort* and, in that vein, has dealt with the properties of his late wife without taking Letters of Administration. In the result, Plaintiff's reliefs (i) and (iii) are dismissed.

ISSUE 5

Whether or not the plaintiff is the proper party to apply for Letters of Administration to administer the estate of the late Mariatu Bashiru. Plaintiff per his relief (ii) is seeking an order that he is the rightful person to apply for letters of administration to administer the estate of the late Mariatu Bashiru, his wife. Order 66 rule 13 of the High Court (Civil Procedure) Rules, 2004 (C. I. 47) provides the order of priority of grant of letters of administration where a person dies intestate as follows:

Where a person dies intestate on or after 14 June 1985, the persons who have beneficial interest in the estate of the deceased shall be entitled to a grant of letters of administration in the following priority: (a) any surviving spouse; (b) any

surviving children; (c) any surviving parents; (d) the customary successor of the deceased.

From the above, Plaintiff being a surviving spouse is entitled to a grant of letters of administration in respect of his late wife's estate and so are the persons named under order 66 rule 13 of C. I. 47 in order of priority. The number of persons to whom a grant of letters of administration may be made shall not exceed four unless otherwise provided by an enactment.

In light of the above, is the Plaintiff entitled to the reliefs he seeks? Reliefs (i) and (iii) are dismissed. Plaintiff is entitled to the grant of letters of administration to administer his late wife's estate with any person who may qualify under the law, and his wife having died intestate, relief (ii) is granted accordingly.

Is the Defendant also entitled to his counterclaim? Defendant sought a declaration of title to the disputed property and perpetual injunction to restrain Plaintiff, his successors, assigns, privies, and all those who rightfully claim through him from interfering with the disputed property. Defendant also sought a declaration that Plaintiff's claim was unmeritorious. A defendant counterclaimant stands in the same position as a plaintiff to prove his or her claim on a preponderance of probabilities, as defined in section 12 (2) of the Evidence Decree, 1975 (NRCO 323). The Defendant is thus required to adduce sufficient evidence to prove his counterclaim.

Defendant traced his root of title to his vendor, the DW2 who sold his farmland to Defendant and his two siblings namely Nasiru Bashiru and the late Mariatu Bashiru in 2007. Exhibit '2A' is an application letter dated 7th July 2007 for the purchase of one building plot by the Defendant and his two siblings mentioned above. The application was recommended for approval by DW2 who at the time was the Plot and Development Committee Chairman. The sale of the land was approved by Nana Gyahene Kokoo II,

Chief of Nsutam. The purchase of the land was evidenced by a receipt dated 20th July 2007 and issued by the Nsutam Unit Committee as Exhibit '2b'. DW2 who sold the land to the siblings attended to testify in support of the counterclaim. The Defendant testified that soon after the acquisition of the land, they went into possession by the construction of the disputed property. Defendant tendered Exhibits 4 series showing 32 receipts of building materials bought by Defendant in 2019 for the construction of the disputed property. The defendant was cross-examined thus:

Q72 You have currently rented out the property to some Indians, not so?

A72 That is true My Lady

Q74 Can you tell the Honourable Court at what level of development the property was at the time of marriage between the plaintiff and your sister?

A74 My Lady we had finished roofing, plastering, fixing of the doors, and it was left for us to fix the tiles, manhole, and toilet before my sister got married to the plaintiff.

Q78 I suggest to you that you and your family admitted to the plaintiff's contribution and agreed to refund his contribution in the property to him.

A78 My Lady that is not true, the family asked him to show receipts or payments he had made in the building but he did not do that and brought the matter to court.

Q91 I suggest to you that the first receipt in exhibit 4 series dated 25th February 2019 and captures the purchase of 6 pieces of 11.5mm of iron rods, and therefore the house could not have been completed before 2019 as you want the court to believe.

A91 My Lady we started building that house in 2007, so the iron rods that were purchased were used to construct a manhole in that house.

From the evidence adduced, the Court finds that the Defendant and his siblings acquired the land from DW2 through the Nsutam Unit Committee and by the approval of the Chief of Nsutam. The siblings went into possession of the land by the construction of the buildings on the land and subsequently renting the property out to tenants. The Court is satisfied that Defendant has proved the root of title, mode of acquisition, and acts of possession to the land he and his siblings purchased. In conclusion, judgment is entered in the following manner:

- (1) The disputed property is not the property of Plaintiff's late wife.
- (2) Plaintiff's reliefs (i) and (iii) are dismissed.
- (3) Plaintiff is entitled to the grant of letters of administration to administer his late wife's estate with any person who may qualify under the law, and his wife having died intestate. Plaintiff's relief (ii) is granted accordingly.
- (4) Title to all that piece of land with building appurtenant situate, lying, and being at Nsutam is hereby declared in favour of the Defendant.
- (5) An order of Perpetual injunction is hereby made against the Plaintiff, his successors, assigns and privies, and all those who rightfully claim through him from interfering with the disputed property.
- (6) Costs of GHS5,000.00 is hereby awarded in favour of the Defendant.

Justice Gifty Dekyem (Mrs.)

Justice of the High Court

Cases cited:

Takoradi Flour Mills v Samir Faris [2005-2006] SCGLR 882

Nana Amua Gyebu XV vs. Mondial Veneer (Gh) Ltd [2010] DLSC2519