

IN THE DISTRICT COURT HELD AT DROBO ON FRIDAY, 27TH DAY OF JULY, 2023.

BEFORE HER WORSHIP LINDA ENYONAM NYAHE (MRS.) MAGISTRATE

SUIT NO. BR/DR/DC/AI/08/2021

KOFI BOSEA : : :

PLAINTIFF

VRS

1. KWAKU TAKYI :

DEFENDANTS

2. KWABENA BADU

PARTIES: PRESENT

Plaintiff per his writ of summons claims against the Defendants jointly and severally as follows;

- a. Declaration of title and ownership and recovery of possession of all that entire building plot being, lying and situate at Abirikasu near New Life Preparatory school bounded by the respective properties of; New Life Preparatory School, Yaw Adjei, Kofi Bosea (Plaintiff) and a public toilet which was gifted to me by my late father about sixteen years ago before his death.
- b. Cost to cater for Plaintiff's expenses.

PLAINTIFF'S CASE

The Plaintiff is a farmer and lives in Abirikasu. The Defendants are both farmers and also reside at Abirikasu in the Jaman South Municipality. The parties are all relatives. The case of the Plaintiff as per his statement of claim is that about sixteen (16) years ago, his late father Kwasi Kumah gifted two (2) parcels of building plots at Abirikasu including the

building plot in dispute bounded by the respective properties of; New Life Preparatory School, Yaw Adjei, Kofi Bosea (Plaintiff) and a public toilet.

The Plaintiff averred that about two (2) years ago he built on one of the two building plots. The Plaintiff contended that later this year he intended putting up a structure on the other building plot (plot in dispute). On 14th October, 2020 he hired a mason to construct a foundation on the disputed building plot but the Defendants interfered with the work. The Plaintiff stated that he confronted the Defendants and they adversely claimed ownership of the said building plot. The Plaintiff finally said that all efforts to compel the Defendants to stop interfering with the Plaintiff's activities on the said building plot have proven futile.

CASE OF DEFENDANT

The Defendants denied the claims of the Plaintiff. The Defendants' case as gathered from their Statement of Defence is that, one Obaapanin Abena Twumasiwaa (deceased) who also came to be known as Akua Donkor or Nkor had a land in or around 1997 which was being used as a football park at Abirikasu.

Defendants averred that in the year 1997 Op. Kwasi Agyei and Op. Kofi Fofie who were then elders at Abirikasu pleaded with the relatives of Obp. Abena Twumasiwaa (including the 2nd Defendant) that the elders of Abirikasu before the demise of 2nd Defendant's mother (Obp. Abena Twumasuwaa) had agreed with her in her lifetime to use the park originally acquired by her to build a school.

The relatives of Obp. Abena Twumasiwaa (including the 2nd Defendant) agreed and divided the land into two halves and gave one to teacher Isaac to establish a school thereon. In the year 2000, the relatives of Obp. Abena Twumasuwaa demarcated their share of the land (Football Park) into building plots and shared same among the grandchildren of Obp. Abena Twumasuwaa.

Defendants stated that that after the sharing, one John Nketiah, the elder brother of the 1st Defendant had two plots (double plot). John Nketiah died in the year 2009 and after his funeral, the family sold one of John Nketiah's plot to Comfort Koma to defray the debt incurred after the funeral.

It is the case of the Defendants that the land originally acquired by Obp. Abena Twumasuwaa (2nd Defendant's mother) which was later divided into two by Op. Kwasi Agyei and Op. Kofi Fofie is the land from which the disputed plot originated from.

Defendants stated that the Plaintiff's father's land was different from their land and on the day of demarcation their land was divided into building plots; Plaintiff's father's land was taken out and is currently being occupied by Plaintiff's sister Akosua Twenewaa.

Defendants stated that there were teak tress which indicated the boundary between their land and Plaintiff father's land.

Defendants contended that on 19/5/2019 the 1st Defendant sent lumbers onto the land to raise a temporal structure thereon but the Plaintiff went and burnt all the wood and the matter was reported to the police at Drobo. Defendants stated finally that the Plaintiff is not entitled to his claim.

The following issues emerged for determination;

- i. Whether or not the disputed land belongs to Plaintiff's father.*
- ii. Whether or not Plaintiff's father gifted the land in dispute to Plaintiff.*
- iii. Whether or not the land in dispute was acquired by the late Obp. Abena Twumasuwaa the mother of the 2nd Defendant and grandmother of the 1st Defendant and plaintiff.*

iv. Whether or not the Plaintiff is entitled to his reliefs.

EVAVALUATION OF EVIDENCE IN LIGHT OF THE LAW

The law requires of the party who bears the burden of proof in land litigation to prove the root of title, mode of acquisition and various acts of possession exercised over the land. This principle is amply captured in the case of **AGO SAI & OTHERS V KPOBI TETTEH TSURU III [2010] SCGLR 762 at 779** where Ansah JSC had this to say: *“This being an action for declaration of title to land, the burden of proof and persuasion remained on the Plaintiffs to prove conclusively, that on the balance of probabilities, he was entitled to his claim. This could be done by proving on the balance of probabilities the essentials of their root of title and method of acquiring title to the area in dispute, the Obojo lands.”* Also see the cases of **FOSUA & ADU-POKU V DUFIE (DECEASED) & ADU POKU –MENSAH [2009] SCGLR 310 AT 325-327, ABBEY & OTHERS V ANTWI [2010] SCGLR 17 AT 23-24.**

In proving his case, Plaintiff relied on his witness statement filed on 23/02/2021. Plaintiff reproduced all that he has stated in his statement of claim and continued that he knows the Defendants and that sixteen (16) years ago his late father Kwasi Kumah gifted two plots of land to him in other words, double plot situated at Abirikasu. He mentioned the respective boundary owners of the disputed land as; New Life Preparatory School, Yaw Adjei, Public toilet and his other one plot adjoining the disputed land. Plaintiff testified that he had built six (6) bedrooms house on one of the plots about two (2) years ago in which he is currently occupying. He told the Court that he has been in possession of the double plot including the disputed land ever since his late father gifted same to him. That, he has continuously been working on the land thus clearing the plot whenever it is bushy and that he once planted cashew at vantage points to provide shade on the plot. He went on to say that on 14/10/2020, he contracted masons to construct a foundation on the

disputed building plot but the Defendants interfered with the work and when he personally confronted the Defendants, they could not give any tangible reason. He added that the Defendants do not own the disputed plot because before he commenced the construction of his 6-bedroom house which is on one of the plots gifted to him, it was 2nd Defendant he consulted to go and pour libation (pray) on the land as customs demand for a successful beginning and to avert all misfortunes.

In the instant case, the Plaintiff bears the burden of producing sufficient and persuasive evidence to satisfy the Court by proving that the land belonged to his father since the Defendants are disputing same, as well as the validity of the gift and other overt acts exercised on the land as a donee.

After testifying, the Plaintiff called two witnesses. PW1 and PW2. PW1, Ameyaw Dominic testified that Plaintiff is his younger brother whereas the 2nd Defendant is his father (his father's brother). He said many years ago his late father Kwasi Kumah who is also the Plaintiff's father acquired the disputed land then a farmland and when he was young, he used to follow his father to farm. He said the village (Abirikasu) later developed and his father's farmland was caught up with development. When that happened, the elders of Abirikasu town approached his father and pleaded with him to allow his land to be used as a football park. His father then agreed and a football pitch was carved out of his land. He told the court that at a point in time, the football team was dissolved and the elders of Abirikasu town then established a school thereon. That the remaining portion of his father's land was demarcated into building plots by his father and he gifted those plots to some of his children and family members. PW1 went on to mention those that his father gifted the plots to as the Plaintiff (2 plots), Kwaku Adinkra (1 plot), Akosua Twenewaa (2 plots) 4 plots to one Abena Agyei @ Abiba his sister. According to him all these people had developed their plots and built their respective houses thereon. He finally said that the disputed plot is for Plaintiff and the Court should grant same to him. PW2' one Joseph Nketiah was next to testify. His testimony took a different twist. When it got to his turn to testify, Plaintiff prayed the court that his witness

has indicated that he will no longer testify due to threats from the Defendant. The Court therefore issued witness summons to compel the Pw2 to attend court and testify. PW2 repeated all that PW1 told the Court in his evidence-in-chief except that, upon entering the witness box, PW2 prayed the Court to strike out his paragraphs 8 and 9 of the witness statements he intended relying as his testimony.

Paragraphs 8 and 9 of PW2's witness statements which were later struck out reads as follows,

"8. Among those my father gifted the plots were, the Plaintiff (2 plots), Kwaku Adinkra (1 plot), Akosua Twenewaa (2 plots), Kofi Bosea Assemblyman (2 plots), Ameyaw Dominic (1 plot) and all these people had their respective houses on. He also gifted four (4) plots to his sister called Abena Agyei @Abiba

9. I am therefore saying that the disputed plot is for the plaintiff and the Court should grant same to the Plaintiff."

The Pw2's reason was that he did not make the above averments to the person who prepared the witness statement and that his testimony was changed because the disputed land does not belong to the Plaintiff. Surprisingly, PW2 had signed the witness statement containing those statements and there was jurat clause indicating that the statement was read and explained to him. The court however went ahead to strike out those two statements and treated the PW2 as a hostile witness. The Plaintiff was given the opportunity to cross-examine him and so were the Defendants. The 1st Defendant elected to cross-examine the Plaintiff and witnesses. Essentially, PW2's evidence was that the land in dispute does not belong to his father and that the area doesn't form part of their late father's land for that matter Plaintiff's father's land and their father has not also granted any land to the Plaintiff. I will not place much reliance on PW2's witness by reason that his credibility was at stake not just because of the above incidence but also because there were inconsistencies in his witness statements. For instance, when he was asked if he knew about the matter before the Court he answered in the negative. This was strange because he was the same person who has filed witness statement in this case and

alluded to certain facts regarding this case both in his witness statement and under cross-examination. I therefore deem his evidence from a suspicious point of view and didn't place any reliance on same in determining this matter at hand.

Plaintiff was given another opportunity to call another witness due to the fact that his PW2'S evidence turned against him but he did not and maintained the two witnesses he called

I will set out Defendants' case briefly in order to shed more light on the issues at hand before turning on whether the Plaintiff has been able to discharge the burden of proof or not.

In sum, the Defendants testimony was that the land in dispute is located at a place commonly known as New Life Preparatory School at Abirikasu. 2nd Defendant is the uncle of 1st Defendant just as the Plaintiff which means that the Plaintiff's late father and 2nd Defendant are brothers. The Defendants just as they have already told the Court testified that Obaapanin Abena Twumasuwaa who is 2nd Defendant's mother and the grandmother of Plaintiff and 1st Defendant acquired the vast land which the disputed land forms part of. That the land belonging to the late Obp. Abena Twumasuaa shared common boundary with the late Kwasi Kumah, Plaintiff as well as his witnesses' father. According to them in 1995, the land was used as a football pitch. However, in that same year, Op. Kwasi Agyei who came to be known as Emmanuel Agyei in the trial (DW1) and Op. Kofi Fofie and other people who were the elders at Abirikasu pleaded with Mary Buama (the elder child of the late Abena Twumasuaa) and 2nd Defendant to release portion of their mother's land to one teacher Isaac to build a school which I gather is the New Life Preparatory School.

Defendants said the Plaintiff's late father who will not allow a school to be built on the land separated his land from that of Abena Twumasuaa's land and planted teak trees as boundary features between his land and that of his mother that is Abena Twumasuaa's land. 2nd Defendants and the relatives of Abena Twumasuaa including Mary Buama

agreed and divided their mother's land into two halves and gave the portion of the land that was used as football park to teacher Isaac. Defendants said Plaintiff's father's land is now in possession of one Akosua Twenewaa who is the Plaintiff's sister. In the year 2000, the relatives of Obp. Abena Twumasuaa demarcated the remaining land and shared same among her daughters and grandchildren. That, the Plaintiff came to 2nd Defendant to request for a portion of land to build his house and in consultation with Mary Buamaa and 2nd Defendant one building plot was given to the Plaintiff. Further, they told the Court that the land adjoining the land they gave to Plaintiff is for one late John Nketiah the brother of 1st Defendant. They also said one Mensah Abrampah, DW2 withdrew the case to settle and he called the DW1 to assist him. That at the settlement, the mediators found that the land does not belong to Plaintiff.

From the evidence of the parties, it can be deduced that whereas Defendants are contending that the Plaintiff's father shared boundary with Abena Twumasuaa (his mother) that is not the case for Plaintiff. For him, Abena Twumasua doesn't own any land at all which shared boundary with his late father (her son). Plaintiff under cross-examination claimed his father is the owner of the entire land and he gave a portion to teacher Isaac to build the school which shares boundary with his land. The rest of his father's land was shared among his father's children of which he had two plots including the land in dispute likewise the PW1. Since there is contention over who owns the disputed land, Plaintiff must first show that the land belonged to his late father and not the late Abena Twumasuaa as the Defendant's allege before proving the validity of the gift because if it is found that the land doesn't belong to his father then there will be no need to go into the issue of whether the land was gifted to him or not for then the principle of "nemo dat quod non habet" will operate.

In the case of **ODOI V HAMMOND [1971] 1 GLR 375**, the Court of Appeal held per Azu Crabbe J.A that.; *"For a stool or family to succeed in all action for a declaration of title it must*

prove its method of acquisition conclusively, either by traditional evidence or by overt acts of ownership exercised in respect of the land in dispute. It is not enough to state that a family has been on a land since time immemorial without telling the exact form of acquisition."

It is trite learning that a bare assertion by a party of his pleadings in the witness box without more is no proof. Proof in law has been authoritatively defined as the establishment of facts by proper legal means such as producing documents, description of things, reference to other facts, instances and circumstances. **SEE THE CASE OF MAJOLAGBE VRS LARBI [1959] GLR 190 at 192**

Also, in the case of **ACKAH V PERGAH TRANSPORT LTD AND OTHERS [2010] SCGLR 728 AT 736** it was held that; *"matters that are capable of proof must be proved by producing sufficient evidence so that on all the evidence a reasonable mind could conclude that the existence of the fact is more reasonable than its non-existence"*.

A careful look at the testimony of the Plaintiff will show that Plaintiff said nothing about his late father's method of acquiring the land. The chorus sang by Plaintiff and PW1 is that the disputed land belonged to their late father and he gifted the same to Plaintiff herein. It was even Pw1 who shared a brief history of how the land used to be a football park. The entire testimony of Plaintiff and PW1 were just mere averments on oath. There was no evidence of possession as to having been clearing the land when it was bushy.

The said Teacher Isaac whom both parties mentioned and who built the New Preparatory School (thus a boundary owner) and who Plaintiff emphatically told the Court that his late father granted the land to could have been called as a material witness to testify as to whom he obtained the land from whether the Defendants herein or Plaintiff's father was never called. His evidence was crucial and an affirmation that he obtained his grant from Plaintiff's father would make Defendants case fall flat.

It is quite surprising that Plaintiff doesn't share boundary with any of his siblings especially those mentioned in Pw1's evidence since he says his late father shared all his lands to his children which they are occupying now and have developed same. This also cast doubt on Plaintiff's case.

The following ensued during cross-examination of Plaintiff:

Q. I am putting it to you that it is our family land which we have shared among ourselves and offered aseda and we have given you one plot as our son to build your house.

A. My father gifted my plot to me long before you (1st Defendant) started selling the land unlawfully and it was at that time that other members of the family asked that we should share the land for them also to get their share.

The question is which land? If Defendants do not owe any land at all then which lands were they selling? It couldn't also be Plaintiff's father's land because according to him his father shared all his lands to his children that being the case there should be no more lands that the Defendants could either sell or share to other family members.

This response rather makes me lean favorably towards the story of the Defendants that the land is a family property acquired by the late Abena Twumasuaa which have been shared among the family including Plaintiff leaving the disputed land.

Again, during cross-examination the Pw1 who claimed to have followed his late father always to farm on the disputed land was further exposed.

For instance, the PW1 was asked during cross-examination the following,

Q. In the year 1995, one Emmanuel Agyei pleaded that the disputed land be granted to teacher Isaac to build a school. Are you aware or not?

A. I am not aware.

Since Pw1 testified that he was involved in his father's land he should have been aware of the development. Further, he himself testified that some elders approached his father to grant the land for a school to be built on yet it is strange that he happens not to know what is going on with a land he claims he knows very well and has been working on. Granted that the land even belonged to Plaintiff's father, the validity of the gift is in issue.

In ASARE V KUMOJI (2000) SCGLR 298 at 302 per Aikins JSC *"With regards to customary gifts inter vivos, our courts have stressed that the acceptance of gift, especially land must be made by the presentation to the donor of some token acknowledgement and gratitude in the presence of witnesses. There are two ways of making such valid gift, either by a conveyance where a deed is granted to evidence the transaction or orally where it is governed by customary law"*. Plaintiff in his evidence never mentioned those who witnessed the gift. He never mentioned that he offered aseda and was put into possession. It was during cross-examination that these requirements were forced from him and he told the Court that one uncle Peter and Nana Acheampong were present during the gift. However, none of these witnesses were called to substantiate this assertion.

Aside the fact that the witness Plaintiff called testified against him, the evidence on record is manifestly against the Plaintiff. I find that Plaintiff's case is doubtful and is not worthy of belief. Plaintiff having failed to prove his case on the balance of probability, he cannot rely on weaknesses in Defendant's case if any. Defendant on the other hand, called one of the elders DW1 who went to Defendants family to plead for a portion of their land to build a school. On the totality of the evidence, I will lean favorably toward the Defendants case than the Plaintiff. Plaintiff's case is hereby dismissed.

For the sake of peace as relatives, the Defendant's family may consider selling the land to the Plaintiff herein at a reasonable price that is if he shows interest in buying same if not Plaintiff is ordered to remove his temporary structure from the land and shall cease operating his drinking spot on the land.

There will be no order as to cost. Parties shall bear their own cost.

.....SGD.....

H/W LINDA E. NYAHE (MRS.)

MAGISTRATE