

**IN THE DISTRICT MAGISTRATE COURT HELD AT N.A.M.A. NSAWAM ON 28TH
DAY OF JULY, 2023 BEFORE HER HONOUR SARAH NYARKOA NKANSAH
CIRCUIT COURT JUDGE SITTING AS ADDITIONAL MAGISTRATE**

SUIT NO. A1/13/18

**CLEMENCE ZIGAH
BLOCK M
PRISONS QUARTERS
NSAWAM**

PLAINTIFF

VRS:

1. NANA MBIA SARPONG (NON-SUITED)

DEFENDANTS

2. ADAM SHEI WAAD

ALL OF UNNUMBERED HOUSES

TEACHER MANTE

PARTIES: PLAINTIFF ABSENT. DEFENDANT PRESENT.

NO LEGAL REPRESENTATION.

JUDGMENT

The plaintiff by his Amended Writ of Summons sought the following reliefs against two Defendants;

- a. Declaration of title to all that piece or parcel of land situate, lying and being at Teacher Mante in the Ayensuano District in the Eastern Region of the Republic of Ghana.
- b. A declaration by this Honourable Court that Plaintiff has lawfully acquired the said piece or parcel of land from the 1st Defendant and therefore the 1st Defendant has no right to resell the same land to the 2nd Defendant.

- c. General damages for breach of Contract against the 2nd Defendant.
- d. General damages for trespass against the 2nd Defendant.
- e. Perpetual injunction restraining the Defendants, their agents, servants, workmen, personal representatives and assigns from interfering with Plaintiff's right to his land or doing anything whatsoever on the said land pending the final determination of this action.
- f. Cost.

The Plaintiff later discontinued against the 1st Defendant after 1st Defendant passed on. The Plaintiff's reason for discontinuing against the 1st Defendant was that he didn't know any member of 1st Defendant's family and so he could not substitute him.

A perusal of the Plaintiff's initial reliefs stated above reveals that, the reliefs outstanding which are relevant to the then 2nd Defendant and only Defendant now are;

- a. Declaration of title to all that piece or parcel of land situate, lying and being at Teacher Mante in the Ayensuano District in the Eastern Region of the Republic of Ghana.
- d. General damages for trespass against the 2nd Defendant.
- e. Perpetual injunction restraining the Defendants, their agents, servants, workmen, personal representatives and assigns from interfering with Plaintiff's right to his

land or doing anything whatsoever on the said land pending the final determination of this action.

f. Cost.

PLAINTIFF'S CASE

It is Plaintiff's case that in 2009 he purchased two plots of land from the 2nd Defendant and a year after, PW1 claimed ownership of the said land thereby leading to the Plaintiff's decision to pay off PW1 for the land again. Plaintiff continued that in 2018, he found the 2nd defendant developing the land and all efforts made to stop the 2nd defendant proved futile.

PW1

PW1 corroborated the evidence adduced by the Plaintiff and added that the 2nd Defendant does not have any right to the land because the Plaintiff is the rightful owner of the land in dispute.

Plaintiff closed his case after the testimony of PW1 without calling his intended 2nd Witness.

2ND DEFENDANT'S CASE

2nd Defendant claimed to have purchased the land in dispute from the 1st Defendant and that it is wrong for the plaintiff to claim ownership of the land as all the necessary procedures have been followed in the agreement between 2nd Defendant and 1st Defendant.

The legal issues to be determined are:

- i. *Whether or not the Plaintiff is entitled to declaration of title to the land in dispute.*
- ii. *Whether or not an order for perpetual injunction should be directed at the Defendant from interfering with the land in dispute.*

A perusal of the evidence on record reveals that, the Plaintiff failed to describe the land for which he is seeking a declaration of title from this Court. The land was not described by the Plaintiff or his witness in any part of the record.

It is the case that the Plaintiff tendered a receipt of the said land in dispute. And also that Plaintiff called his grantor as a witness to testify as PW1. However, Plaintiff failed to meet the most important condition required in any land litigation, that is, he failed to give a description of the land.

It may well be that the both parties know the land in dispute; however if the land is not made known to the Court by adequately describing same, then the Court cannot accept any party's invitation to declare title for him in respect of such piece of land. The Court's order should be made to affect a specific and identifiable piece of land; as without a description any attempt by the Court to declare title would result in absurdity and ambiguity.

In the case of *Republic v. High Court, Accra; Ex parte Nii Ayi Bonte II (No. 2) [2009] SCGLR 1*. The Court held that, a plaintiff must provide sufficient particulars to enable the Court to identify the land and determine the boundaries accurately.

When a plaintiff seeks a declaration of title, it is essential that, they provide sufficient details and description of the land in question. This requirement serves several purposes, including ensuring clarity, preventing ambiguity, and enabling the Court to properly assess the claim. Failure to adequately describe the land may result in the dismissal or rejection of the plaintiff's claim.

In *Nyikplorkpo v. Agbodotor [1987-88] 1 GLR 165*, the Court of Appeal per holding 3 stated that:

"To succeed in an action for declaration of title to land, recovery of possession and for an injunction the plaintiff must establish by positive evidence the identity and the limits of the land which he claimed".

Also in the case of *Anane v. Donkor [1965] GLR 188 @ 192*, the Supreme Court held that;

"a claim for declaration of title or an order for injunction must always fail, if the plaintiff fails to establish positively the identity of the land claimed with the land the subject-matter of his suit. On the evidence, the plaintiff and co-plaintiff had failed to prove the identity of the farms the subject-matter of their mortgage with the farms the subject matter of the present suits."

Theodore Agyei Osae & Ors. Vrs. Numo Nortey Adjeifio and Others (2007-08) SC GLR 499,

“The burden of proof and persuasion remained on the appellants to prove conclusively, on a balance of probabilities, the boundaries of the Land to which they claimed a declaration of title and perpetual injunction. This burden hardly shifts...to successfully maintain an action for a declaration of title to land, the appellants had to prove with certainty the boundaries of the land claimed”.

As laid down by the cases cited above, a party cannot succeed in an action for declaration of title to land where that party fails to lead evidence on the boundaries of the land. In pursuance of same, the Plaintiff in the present case must fail.

For the reasons stated supra, I need not go into the merit of Plaintiff’s case. I hereby dismiss all the claims of the Plaintiff.

The Defendant on his part had no burden to describe the land in dispute as he did not counterclaim for any reliefs from the Court.

The claim is hereby dismissed in its entirety.

No order as to costs.

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H/H SARAH NYARKOA NKANSAH
CIRCUIT COURT JUDGE SITTING
AS ADDITIONAL MAGISTRATE
28/07/2023