

**CORAM: IN THE NALERIGU DISTRICT COURT HELD ON, 27TH JULY 2023 BEFORE
HIS WORSHIP SIMON KOFI BEDIAKO ESQ.
SITTING AS MAGISTRATE**

SUIT NUMBER: NR/NG/DC/A1/17/2021

YAMUSAH SALIFU (GBANGDAANA)

PLAINTIFF

V

1. ISSAHAKU WUNI (D1)

DEFENDANTS

2. IDDRISU WUNI (SUNKAFA -DANA) (D2)

3. NANTOMAH WUNI (D3)

4. ALHAJI NUHU ABDULAI (D4)

5. KONI ABDULAI (D5)

6. ISSAH NANTOMAH (D6)

7. DANABA WUNI (DUGURUDANA)(D7)

8. MUSAH YAHAYA (D8)

9. JOSEPH CHANTIWUNI (D9)

10.KWASI DIAYA (D10)

11. KASIMU BAWA (D11)

JUDGEMENT

Introduction:

The plaintiff on 6th July 2020 filed this action against the defendants seeking the following reliefs:

1. Declaration of title to that piece of land situated and lying at Nalerigu. The farmland which is the subject matter is bounded as follows:

Bounded by Dintigi-Rana and Yamusabla Salifu's farms in the North, in the East bounded by Nuhu Gumah the son of Buntuo Gumah's farm, in the West old road of Bukperi alongside Danladi Sawyer and Bugri Abugri's farms and in the south bounded with Tidow Tia the brother of James Koligu Tia's farm.

2. Recovery of the said land.

3. Injunction on the said land
4. Damages for trespass
5. Costs.

CASE OF THE PLAINTIFF

Plaintiff testified that he is a pensioner, and he lives in Nalerigu. According to the plaintiff, D1, D2, D3 and D7 are his half-brothers with the same father but with different mothers. The plaintiff's case, in brief, is that he returned from southern Ghana in 1978 and he went to his father by the name of Zambu-naa Wuni Mahami Waafu for land to farm on. Plaintiff says that his father directed him to go and see one Tidow Tia who lives in the house of Yakurugu for him to show him the land of Bukperinaaba Salifu. He avers that his father told him to give a portion of the land to the son of Bukperinaaba Salifu who is called Nantomah Salifu after Tidow Tia shows the land to him. According to the plaintiff, he complied with his father's instructions when he took the land.

Plaintiff avers that in 1985, a dispute arose between himself and Nantomah Salifu which went before the Nayiri. He testified that when the matter was being heard by the Nayiri, the son of Yidana Buntoo, by the name of Buntoo Gumah who was amongst those present at the hearing with the permission of the Nayiri stated that the land that the plaintiff and defendant are fighting over belongs to his father. According to the plaintiff, Nayiri disagreed with Buntoo Gumah and stated that he knows that that land is Bukperinaaba's farmland. The plaintiff said that confusion and a prolonged argument ensued and as a result, a three (3) member committee comprising; Adu Wuni, Mba Akara Tia and Bonzangna Gumah was commissioned to go on to the disputed land to demarcate a portion of the land for Buntoo Gumah and the remainder given to the plaintiff and Nantomah Salifu. The plaintiff avers that the next day, they went onto the land with the committee members and a portion of the land was demarcated for Buntoo Gumah and the rest given to him and Nantomah Salifu. The plaintiff tendered in evidence Exhibit A which he avers is the site plan of his portion of the land.

Plaintiff avers that in 2018, D1 returned home from the southern part of Ghana and together with D2, D3 and D7 took his land. The plaintiff stated that he refused to allow D1, D2, D3 and D7 to take his land so they reported him to the Nayiri with the complaint that he has four (4) farmlands whilst they don't have any. According to the plaintiff, while the matter was before the Nayiri, he offered to give one building plot each to D1, D2 D3 and D7 but the Nayiri asked that he gives each of them two building plots. He stated that he agreed to comply with what the Nayiri said. The plaintiff avers that he together with his half-brothers went onto the land with one Braimah to demarcate the two building plots each to his brothers. Plaintiff testified that when they got to the farm D1 stated that they will not accept two building plots each because Mba Mansu said that each of them was to take two acres. Plaintiff told the court that he disagreed with what D1 said so they came back home. They went to Nayiri's palace the next day to meet the committee to resolve the disagreement, but they could not reach an amicable settlement. The plaintiff stated that the committee asked them to take their matter away. According to the plaintiff, D1, D2, D3 and D7 subsequently went onto the land, cleared it with machetes and planted pegs with red bands around them. Plaintiff stated that he reported the matter to Nayiri and Nayiri after talking to the defendants asked the plaintiff to permit him to demarcate five acres of the land for his half-brothers i.e., D1, D2, D3 and D7. The plaintiff avers that he agreed to what the Nayiri said, and the Nayiri went on to cause five acres out of the land to be demarcated for D1, D2, D3 and D7. Plaintiff testified further that D3 went to Nayiri and told him the demarcation should have been six acres so that D1, D2 and D3 all get two acres each. Plaintiff avers that when he was told what D3 had said to Nayiri, he agreed and asked D1, D2, D3 and D7 to come to him for the demarcation of the land accordingly but they refused to come to him. They rather went onto the land and demarcated three acres for each of them. Plaintiff states that he went and informed Nayiri that he will no longer give them the land because of what they have done. According to the plaintiff, D2 ploughed the three acres they demarcated for him, and the plaintiff went and planted guinea corn on that land. He stated that after planting the guinea corn seeds D3 together with his brother Alhassan Wuni and his son Issah Nantomah went to the land and sprayed the guinea corn with a chemical called condemn.

Plaintiff concluded that after a failed attempt to resolve the issue of the destroyed guinea corn plants via the police, he decided to bring the matter to this court.

CASE OF D1:

D1 is a farmer who lives in Nalerigu. He stated that the plaintiff is his senior brother. D1 told the court that he has the same father as the plaintiff but with different mothers. His case is that the land in respect of which the defendant has brought himself and the other defendants to court does not belong to the plaintiff only. According to D1, the land is part of the estate of their late father. He testified that the plaintiff is not the eldest son of their father so he cannot take over the estate of their father after his demise. He added that the plaintiff has usurped the powers of the eldest son of their father by laying claim to the land which is the subject matter of this suit. He avers that their father was the chief of Zambrugu so when he died, his eldest son was appointed as the regent to the skin. According to D1, the regent is the one who can take over the assets of their father and not the plaintiff. D1 avers that their father never told any of his children that he has given the land in question to the plaintiff and that if he gave the land to the plaintiff their father would have told some of his many children. D1 concluded that the plaintiff wants to cheat the other siblings as he refused to agree for the matter to be settled by Nayiri stating that it is only the court that can settle it.

CASE OF D4

D4 is an Arabic teacher and farmer who resides in Nalerigu. According to D4, he bought the land in respect of which the plaintiff has sued him from D6. He avers that after he bought the land, he went and poured a heap of river sand on the land. When the plaintiff saw the river sand, he informed D4 that he owns the land. He stated further that he took D6 to the land to meet the plaintiff. According to D4, D6 told the plaintiff that he sold the land to D4, but the plaintiff still insisted that he owns the land and not D6. He avers that the plaintiff instructed him not to build on the land as the land is a subject matter of a suit in court. D4 stated that he has since left the land and he awaits the judgement of the court. He concluded that he would welcome whatever decision the court gives and go to the person who wins to see if that person will give him the land.

CASE OF D5

D5 testified that she is a trader who lives in Nalerigu. She stated in her evidence in chief that she bought the land from D3 after D3 told her he has land to sell. According to D5, D3 told her the land is for his father. She stated further that at the time she was buying the land, there was no litigation on the same. It was after she bought it that she heard that the land was a subject matter of a suit in court.

CASE OF D7

D7's case in summary is that he is a farmer living in Zamburugu. The plaintiff is his senior brother. D7 stated that the plaintiff has brought them to court in respect of their father's land. He avers that the land which is the subject matter of this suit was given to the Akrama people by their father for them to be caretakers of the land when their father was moving to Zamburugu. He stated that their father subsequently told the Akrama people to farm on the land as he has gotten land in Zamburugu. According to D7, the plaintiff was not in Nalerigu at that time as he was in Kpalugu. D7 avers that the plaintiff came home and went to their father to ask for their land to farm. Their father told the plaintiff that he has made the Akrama people the caretakers of the land so the plaintiff should go and tell them that he wants the land to farm. D7 stated further that their father told the plaintiff to give a portion of the land to the Akrama people which the plaintiff duly complied. D7 stated that while the plaintiff was on the land farming he was accused by one Yidana Bontoo Gumah of encroaching on his land. Yidana Bontoo Gumah reported the matter to Nayiri at the time. The Nayiri invited them to the palace. D7 stated that he and D2 accompanied their father to the palace and the plaintiff was also invited to the palace. D7 avers that Nayiri told his father that Bontoo Gumah has reported to him that the plaintiff is encroaching on his land. According to D7 because of the respect his father had for the Nayiri, his father stated that the Nayiri owns the land, as well as his children and himself so he will comply with the decision of the Nayiri in respect of the matter. D7 testified further that the Nayiri appointed some of his elders to go onto the land and demarcate a small portion of it for Yidana Bontoo Gumah which they accordingly did. He continued that the plaintiff took their portion and gave part of that to PW1 and his siblings. According to D7 the remainder of the land which the plaintiff kept is for all the 12 children of their father. He intimated that when the plaintiff was sharing the land with PW1 he took a larger portion because his siblings are many.

D7 avers that after attempts to convince the plaintiff to give his siblings portions of the land had failed via the intervention of their eldest brother and family head, they reported the matter to Nayiri on the advice of their family head. According to D7, at the Nayiri palace plaintiff stated that the land is 15 and a half acres. The Nayiri ruled that each mother's side (children of each wife of their father) should take two acres and they accordingly agreed with the ruling of the Nayiri. D7 states that when they went onto the land to demarcate and take their portions as ruled by Nayiri, the plaintiff told them he will give each mother's side two building plots. They disagreed and went back to the Nayiri who confirmed that he ruled for each mother's side to take two acres. According to D7, Nayiri revised his ruling and said he is now giving each mother's side three acres. They however insisted on taking the two acres each as earlier ruled by Nayiri, and they went ahead and took two acres for each mother's side. According to D7, D1, D2 and D3 farmed on their mother's side portions of the land the year they took the land without any interference from the plaintiff. It was in the third year that D3 did not start farming early so the plaintiff went and farmed on his land. In the fourth year, the plaintiff again went to farm on D3's portion and the D3 after the crops grew went and sprayed it with weedicides. The matter went back to Nayiri, but it could not be resolved, and it ended up in this court. D7 concluded by praying that the court to assist them to share the properties of their deceased father.

D7 called Salifu Wuni and Wuni Abubakari as witnesses to support his defence.

CASE OF D8

D8 testified that he lives in Nalerigu and works as a security man for the Ghana Community Water and Sanitation Agency. He avers that he bought the land in respect of which the plaintiff has brought him to court from D7. According to D8, the transaction to buy the land started between his children and D7. D7 agreed with D8's children to sell the land for GHS 8,400. D8 stated that his children involved him, and he proceeded to pay for the land after which he went to inspect the land. He was happy with the land, so he had the boundaries demarcated, erected pillars and wrote his name and number on them. D8 avers that the plaintiff called him on his phone and asked who he was and how he got possession of the land. He added that he told the plaintiff he bought the land from D7, but the plaintiff insisted that the land belongs to him and that the land is being litigated in court.

CASE OF D9

D9 is a native of Zarantinga but a resident of Asamankese. He stated that he is a pharmacy technician. D9 testified that he acquired the land from D3 through his brother in November 2021. According to D9, he proceeded to acquire legal documents to cover the land. He tendered in evidence this legal document which is titled Allotment of Plot document by the Mamprugu Skin land, and this was admitted in evidence as Exhibit 10. D9 stated that there is a clause in Exhibit 10 which requires development of the land to commence within 1 and 2 years. He stated that he came to Nalerigu and went to see the chief of the area the land is situated. The chief gave him permission to start the project. He also stated that he went with his brother who bought the land for him to see D3. D3 told them to start the project. D9 avers that on 21st November 2021, a trip of sand was sent there, and he started building on the land. He avers that he built to the third course without anyone giving him notice to stop work. He stated that when he was about to start the fourth course, the plaintiff came to meet him on the land and told him that the land is his. It was given to him by his father. According to D9, the plaintiff asked if he has any legal document covering the land and he said yes and showed the same to him. D9 testified further that he went to D3 and informed him what transpired between him and the plaintiff and D3 told him that the land belonged to his father, and it has been given to him, so he was free to sell the same. According to D9, he did not believe the plaintiff was the owner of the land, so he continued with his project until he received a call from his brother that the plaintiff has taken him to court.

CASE OF D10

D10 is a farmer who resides in Nalerigu. D10 avers that he acquired the land from D2. According to D10 after he had paid the purchase price of the land to D2, he went and poured a heap of sand on the land and started moulding blocks. He stated that it was at this point that the plaintiff came to him and asked him who sold the land to him. He added that he told the plaintiff that D2 sold the land to him. D10 testified that the plaintiff told him that the land is not for D2. The plaintiff further told him to stop moulding the blocks. According to D10, he told the plaintiff that if D2 turns out not to be the owner of the land he will pack all his things and go. D10 testified that he subsequently went to D2 with his in-law to ascertain the

truth of the plaintiff's allegation. According to D10, when they went there, D2 told them that the land is for him and he has sold it so if anyone tells them otherwise, they should not believe that person. He concluded that he later received a writ of summons to appear before the court.

CASE OF D11

D11 is also a farmer who resides in Tichiritaba. According to D11, he acquired the land from D2. He stated that he wanted a building plot to buy, and he heard that the D2 has land to sell. He avers that he made enquiries in respect of the land from D7 and D7 told him the land belongs to their father. After D7 told him this he went ahead and paid for the land. He stated that he started building his house on the land. When he got to the second course, he received notice from the plaintiff that the land is the subject matter of a suit in court and that he has been joined as a party to the suit.

ISSUES IDENTIFIED:

The following issues have been identified for determination by this Court:

1. Whether or not the land which is the subject matter of this suit was validly gifted to the plaintiff by his father and therefore title to the land should be declared in his favour.
2. Whether or not the plaintiff is entitled to recover possession of the land from the defendants
3. Whether or not the plaintiff is entitled to be compensated by D3 and D6 for damage caused to his guinea corn.

BURDEN OF PROOF:

Before a court decides a case one way or the other, each party to the suit must adduce evidence on the issues to be determined by the court to the standard prescribed by law. In

the case of **Akrofi v Otenge and Anor [1989-90] 2 GLR 244** the venerable Adade JSC. held that:

“what is proof? It is no more than credible evidence of a fact in issue. This may be given by one witness; or by several witnesses; what matters is the quality of the evidence.”

The above legal position is supported by various provisions of NRCD 323, **Section 14 of the Evidence Act, 1975 (NRCD 323)** provides that:

14. *Except as otherwise provided by law, unless and until it is shifted a party has the burden of persuasion as to each fact the existence or non-existence of which is essential to the claim or defence he is asserting.”*

This being a civil suit, the burden of producing evidence by both sides in the suit as well as the burden of persuasion is one to be determined on the preponderance of probabilities as defined by **Section 12 of the Evidence Act 1975 (NRCD 323) which stipulates as follows:**

Proof by a Preponderance of 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 a fact is more probable than its non-existence.*

The defendant carries the burden of proving the facts alleged in his defence to the same degree as the burden Plaintiff carries in proving her claim against Defendant.

It is also trite law that for every case there is a burden of proof to be discharged and the party who bears the burden will be determined by the nature and circumstances of the case.

Sections 10 and 11(1) and (4) of the Evidence Act, 1975 (N.R.C.D. 323) provide that:

“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 or by proof beyond a reasonable doubt.*

11. Burden of Producing Evidence Defined.

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

ANALYSIS:

The plaintiff testified at the trial by himself and called two witnesses before he closed his case. D1, D4, D5, D8, D9, D10 and D11 at the trial testified by themselves in their respective defences and called no witnesses. D7 testified by himself in his defence and called two witnesses. D2 waived his right to open his defence and stated that he relies on the defences of D1 and D7. D6 for the entire hearing of the matter never appeared in court despite being served with the writ of summons and several hearing notices. D3 died before he could open his defence. He was not substituted as a party in the suit.

The first issue for consideration is whether or not the land which is the subject matter of this suit was validly gifted to the plaintiff by his father and therefore title to the land should be declared in his favour.

For a plaintiff to be successful in a land suit, the plaintiff must establish his root of title, method of acquisition and identity of the land among others. In **Yehans International Ltd. v. Martey Tsuru Family and 1 Or., (2018) JELR 68871**

(SC) Adinyira JSC held that: *"It is settled that a person claiming title has to prove: i) his root of title, ii) mode of acquisition and iii) various acts of possession exercised over the land ... This can be proved by either traditional evidence or by overt acts of ownership in respect of the land in dispute. A party who relies on a derivative title must prove the title of his grantor."*

See also **Mondial Veneer (Gh.) Limited v. Amuah Gyebi XV [2011] 1 SCGLR 466.**

In a claim for a declaration of title, recovery of possession and an injunction, the plaintiff is required to prove the identity of his land by providing positive evidence. **See Agyei Osae & Others v Adjeifio & Others [2007-2008] SCGLR 499** and **Anane and Others v Donkor and Another and Another (Consolidated) [1965] GLR 188.** The plaintiff identified the land as land situated and lying at Nalerigu bounded by Dintigi-Rana and Yamusabla Salifu's farms in the North, in the East bounded by Nuhu Gumah the son of Buntuo Gumah's farm, in the West old road of Bukperi alongside Danladi Sawyer and

Bugri Abugri's farms and in the south bounded with Tidow Tia the brother of James Koligu Tia's farm. The plaintiff tendered in evidence Exhibit A which is a site plan of the land drawn to scale to prove the identity of his land.

To establish his root of title, the plaintiff in his evidence-in-chief and in the answers, he provided to questions posed to him during cross-examination stated that, the land which is the subject matter of this suit was given to him by his father. He went on to state that the land belonged to his father's senior brother called Bukperinaaba Salifu. Plaintiff's first witness by the name Nantomah Salifu (hereafter 'PW1') in his testimony also stated that the land belonged to his father's father and that his father was the one who first cleared the land. Considering the plaintiff's averment that the land was given to him by his father and not Bukperinaaba Salifu, the onus is on the plaintiff to prove to the court the capacity his father possessed which gave him the right to give land which belonged to Bukperinaaba Salifu to the plaintiff. The plaintiff failed to adduce any evidence to establish to the court the capacity his father had to give the land to him.

From the evidence of the plaintiff, it can be deduced that his alleged mode of acquisition of the land was by way of an inter vivos gift from his father in the year 1978 under customary law. It is therefore necessary to ascertain whether the gift was validly given to the plaintiff in accordance with customary law. The Supreme Court held in the case of **Giwah v. Ladi [2013-2014] 2 SCGLR 1139** that to prove a valid gift, the party must establish that the gift was offered and accepted and must be witnessed by somebody other than the donor and that the bare assertion of the making of a gift without more does not constitute sufficient proof of the existence of the gift.

It is quite necessary to note that no one can give what they do not have, or no one can transfer a greater right to another than he himself has. This is derived from the famous Latin maxim "*Nemo dat quod non habet*". Based on this maxim, the plaintiff's father can only gift to the plaintiff or any other person land that he has valid title to. It is therefore relevant for the plaintiff to first prove to the court on the balance of probabilities that his father owned the land which he claims he gifted to him. According to the plaintiff, the land which is the subject matter of this suit belonged to Bukperinaaba Salifu. Based on this averment by the plaintiff, his father could not have purported to give or gift the land to the plaintiff. There is no evidence on record to show that the plaintiff's father inherited the land from his senior brother Bukperinaaba Salifu as his customary successor or through any other legitimate means. If he did, the plaintiff failed to lead any evidence to establish the same. In **Majolagbe v Larbi and Others [1959] G.L.R 190** at page 192 Ollennu J. (as he then was) stated as follows: "*Proof in law is the establishment of facts by proper legal means. Where a party makes an averment capable of proof in some positive way e.g. by producing documents, description of things, reference to other facts, instances, circumstances, and its averment is denied, he does not prove it by merely going into the witness box and repeating the averment on oath, or having it repeated on oath by its witness. He proves it by producing other evidence of facts and circumstances, from which the Court can be satisfied that what he avers is true.*"

D1 and D7 admitted during trial that their father gave the plaintiff land which the plaintiff shared with PW1 and subsequently the Nayiri gave a portion of the same to Yidana Bontoo Gumah. They claim the land is for their father contrary to the claim of the plaintiff that the land belonged to Bukperinaaba Salifu. They also asserted that the land was given to the plaintiff to just farm on the same and feed his family, but it was not validly gifted to him. Therefore upon the demise of their father, the land formed part of his estate to be distributed amongst his children. D1 and D7 apart from mere averments did not prove to the court that the land belonged to their father. The only evidence they provided by themselves and through the witnesses of D7 was that their father farmed on that land before he moved to Zamburugu and that when he moved to Zamburugu he put the land in the care of the Akrama people. This does not prove on the balance of probabilities that the land belonged to their father.

I, therefore, find that the land which is the subject matter of this suit was not validly gifted to the plaintiff by his father as the plaintiff could not prove that the land belonged to his father.

The second issue for consideration is whether or not the plaintiff is entitled to recover possession of the land from the defendants.

In Ghana, possession of land is an important aspect of land law. It is commonly believed that possession is nine-tenths of ownership. However, it is important to note that possession can be defeated by someone with a better title. Long possession of land creates a strong presumption of ownership, although this presumption can be rebutted. A person in possession of land has a perfectly good title against everyone except the rightful owner.

Even though the plaintiff could not prove that the land was validly gifted to him by his father it is a fact that he took possession of the land in 1978 and he gave a portion of the land to PW1 as instructed by his father. According to the plaintiff, the land Tidow Tia showed him was about 100 acres. PW1 admitted that the plaintiff demarcated a portion of the land for him when he took possession of it. It is unclear the size of the land the plaintiff gave to PW1. It is also unclear the size of the land that the plaintiff kept for himself at that time. Plaintiff and PW1 possessed the lands up until 1985. The possession of the land by the plaintiff and PW1 was interrupted in 1985 when Yidana Bontoo Gumah laid claim to the land that the plaintiff took and shared with PW1. According to the plaintiff, the matter was resolved by Nayiri at the time. The Nayiri set up a three (3) member committee which included Adu Wuni, Mba Akara Tia and Bonzangna Gumah to go and share the land between the plaintiff, PW1 and Yidana Bontoo Gumah. According to the plaintiff, the committee went onto the land and demarcated a portion for Yidana Bontoo Gumah and the remainder was given to the plaintiff and PW1. This averment by the plaintiff was corroborated by the testimony of D7 particularly, the claim made by Yidana Bontoo Gumah to the land and the demarcation of a portion of the land for Yidana Bontoo Gumah. The plaintiff did not tell the court the size of the land that was demarcated for Bontoo Gumah neither did he tell the court the size of the land he and PW1 were given by the Nayiri's committee. Considering that the site plan in Exhibit A describes the land plaintiff is claiming to be 12.2 acres, then it is safe to say that that is the size of the land that the plaintiff took after Nayiri gave the land to the plaintiff and PW1.

Plaintiff testified that when the Nayiri was resolving the issue which involved Bontoo Gumah's claim to the land he and PW1 possessed, his father was given the opportunity to speak at the hearing and his father said this; *"Nayiri, you enskinned me as the Zamburugu Chief and the land there is my land. I cannot therefore leave Zamburugu and come to lay a claim to land at Nalerigu. The disputed land is for you, Nayiri and the parties to the dispute are your children. You can therefore give the land to whomsoever you please."*

This averment the plaintiff made is corroborated by the testimony of D7 who also testified as follows; *"When we all sat, the Nayiri told our father that Yidana Bontoo Gumah has reported that the plaintiff is farming and encroaching on their land. At that time, we had so much respect for our chiefs, so my father said to the Nayiri that the Nayiri owns the land, himself, and his children. That is how our father started to talk. Our father said he will not talk about the land he will comply with whatever the Nayiri decides."*

This statement made by the plaintiff's father clearly indicates that the land did not belong to him, and he did not lay any claim to it. Even if it belonged to him, before the Nayiri, his elders and all those present at the gathering, he surrendered his title or ownership to the Nayiri.

On pages 16 and 17 of an article written by Sagre Bambini and Abdulai Abubakari and published in the Journal of Poverty, Investment and Development – An Open Access International Journal Vol. 3 2014 titled Ownership and Access to Land in Urban Mamprugu, Northern Ghana the writers stated that *"all land in Mamprugu generally belongs to the Nayiri (paramount chief of Mamprugu traditional area) who holds it in trust for the people.....At another (micro) level most lands that have ever been cultivated or settled on belong to a family or a clan. Such ownership usually emanates from an individual or a family's ability to become the first known party to cultivate or settle on such pieces of land. When an individual or a family settles on or cultivates a virgin land, the individual or family owns the land at the micro level. A piece of land owned as a result of first cultivation is referred to as "Kpakyoo" in Mamprugu"*

The writers on page 18 of the article stated the condition under which ownership of agricultural land at the micro level can be frozen by chiefs. This included protracted disputes over the same piece of land by two or more parties.

Based on the above article, Nayiri owns the entire Mamprugu land as was rightly stated by the father of the plaintiff.

It appears to the court from the evidence on record that when the dispute arose between the plaintiff, PW1 and Bontoo Gumah, the Nayiri in resolving the matter took over the land irrespective of who owned it and caused the committee set up by him to demarcate portions of the land for the plaintiff, PW1 and Bontoo Gumah. The Nayiri could not have done that if he had not taken control of the land. What this means is that the land which is the subject matter of this case and the lands of PW1 and Bontoo Gumah were granted to them by the Nayiri as the rightful owner.

This conclusion is buttressed by a statement made by the plaintiff in his evidence-in-chief that after the committee demarcated the land for them, he went to his father in Zamburugu to inform him that Nayiri had given the land to them. Therefore, whatever right the plaintiff has in the land described in Exhibit A is derived from Nayiri as his grantor and not from his father or Bukperinaaba Salifu.

After Nayiri had shared the land between them, the plaintiff possessed his portion of the land without interference from any person, not even D1, D2, D3, D7 or any of his other siblings until 2018. According to the plaintiff in 2018, D1 returned from southern Ghana and joined forces with his other siblings to take his land. According to D1, D2, D3, D7 and the two witnesses for D7, who are also siblings of the plaintiff, the land which is the subject matter of this suit belonged to their father and it is part of their father's estate to be shared amongst his children. They denied that the land was ever gifted to the plaintiff by their father. It is a fact that the dispute between the plaintiff and his siblings was reported to Nayiri by D1 for resolution. According to the plaintiff, it was initially resolved by Nayiri for the plaintiff to give each mother's side two building plots of land. However, when they went onto the land to share, D1 insisted that they will take two acres for each mother's side and not two building plots. D7 and his two witnesses all stated that the Nayiri ruled that each mother's side should take two acres and they agreed to the same but when they got to the land plaintiff decided to give them two building plots each which they refused. The plaintiff testified that after initial disagreements on the ruling of the Nayiri, D1, D2, D3 and D7 went onto the land cleared portions of it and planted red flags on it. He reported the matter to the Nayiri and with his

consent the Nayiri caused five acres of the land to be demarcated for his siblings. Plaintiff testified further that D3 subsequently went to the Nayiri and asked that the demarcation be six acres for the plaintiff's sibling so that each of the three mother's sides will take two acres. According to the plaintiff, he agreed to this ruling by Nayiri. These averments made by the plaintiff taken together with the testimony of D7, and his two witnesses lead me to conclude that Nayiri ruled and ordered for two acres of the land to be given to each mother's side excluding the mother's side of the plaintiff. Plaintiff stated that he had an audio recording of Nayiri's ruling, but he conveniently failed to tender this in evidence.

From the testimony of D7, when the Nayiri ruled and gave them the land, apart from him D1, D2 and D3, farmed on their portions of the land for two consecutive farming seasons without interference by the plaintiff or any person. It was in the third farming season that the plaintiff went onto the portion that was allocated to D3 and farmed on the same. Plaintiff failed to dispute this averment by D7. There is no evidence that the plaintiff interfered with the possession of the portions given to D1 and D2's mother's side. This indicates that the plaintiff accepted the ruling of the Nayiri for each mother's side to get two acres and his mother's side takes the remainder of the land. It is unclear what triggered the plaintiff to change his mind and interfere with D3's portion of the land.

The plaintiff testified that when he agreed to the ruling of Nayiri to give two acres to each mother's side, D1, D2, D3 and D7 failed to come for them to go onto the land for the demarcation but his siblings went onto the land and demarcated three acres each for themselves. This was denied specifically by D7. He stated that they took two acres for each mother's side. This was corroborated by the 2nd witness of D7. Plaintiff failed to prove this averment to the court.

According to the 2nd witness of D7, when the plaintiff refused to give them the two acres per mother's side as ordered by the Nayiri, they went back to the palace and informed the Nayiri. He stated that the Nayiri then ceased the land and asked that any of them who needed land should come to him so that he demarcates a portion of the land for them. He testified that the 1st witness of D7, D1, D2, D3 and himself all went to the Nayiri and portions of the land were demarcated for them. Per the 2nd witness of D7, the land was not given to them by the plaintiff, it was given to them by the Nayiri after he ceased the land. The plaintiff had the

opportunity to cross-examine the 2nd witness of D7, but he failed to damage the credibility and reliability of his evidence in respect of the seizure of the land by Nayiri and the subsequent distribution of portions to the plaintiff's siblings by Nayiri.

It is key to finish with the below answers which were provided by PW1 when he was cross-examined by D1 and D2.

PW1 answers to D1's questions

Q. When the land was shared between you and plaintiff did the plaintiff tell you he is taking the share for all his brothers. A. Yes.

Q. Because of what he told you, he took a bigger portion of the land to share amongst his brothers.

A. Yes, they are many and that is why he took the bigger portion for himself and his brothers.

PW1 answers to D2's questions

Q. I put it to you that the portion of the land the plaintiff took, he took it for all his siblings. That is why he took a bigger portion.

A. That is true. You cannot eat food and leave your brothers children. This matter should be settled in the house and not here.

PW1's answers above validate the decision of Nayiri to give portions of the land to the siblings of the plaintiff. When the plaintiff first took over the land in 1978, he shared the same with PW1 based on the instructions of his father. The plaintiff took a larger portion of the land because he indicated to PW1 at the time that he is taking a bigger share for himself and his siblings.

I, therefore, conclude that the land which is the subject matter of this suit described in Exhibit A was granted to the plaintiff by the Nayiri and the Nayiri subsequently after the siblings of the plaintiff pleaded with him for portions of that land, demarcated portions of the land for them. The presumption that the plaintiff's possession of the land entitles him to the land was rebutted by evidence that Nayiri is the rightful owner of the land after he took over the land and granted portions of it to the plaintiff's siblings. The plaintiff therefore cannot recover

possession of the land from the defendants. The plaintiff is entitled to the portion of the land that Nayiri did not give to his siblings.

The third issue is whether or not the plaintiff is entitled to be compensated by D3 and D6 for damage caused to his guinea corn.

The plaintiff admitted that he went to plant guinea corn on the portion of land that had been demarcated for D3's mother's side and the same was destroyed by D3, D6 and Alhassan Wuni. Considering that I have concluded above that Nayiri rightfully gave 2 acres to D3's mother's side, it is safe to say that the act of the plaintiff going to plant guinea corn on that land or any part of it made him a trespasser. D3 had the right to do as he pleased with the guinea corn the plaintiff planted. I conclude that the plaintiff is not entitled to be compensated by D3 and D6.

DISPOSITION:

Plaintiff's action fails and I accordingly deny all the reliefs endorsed in his writ of summons.

Cost of GHS 500 is awarded against the plaintiff in favour of each defendant except D6.

In respect of the properties of the late father of the plaintiff and his siblings, they are hereby advised to apply for letters of administration for the purpose of sharing the estate of their late father in accordance with the law.

SGD
H/W SIMON KOFI BEDIAKO ESQ
MAGISTRATE
27/07/2023