IN THE DISTRICT COURT HOLDING AT DODOWA, SHAI- OSUDOKU ON MONDAY THE 31ST DAY OF JULY, 2023 BEFORE HER WORSHIP BRIDGET AKPE AKATTAH

SUIT NO: A1/9/2022

EMMANUEL BOADU **PLAINTIFF**
Suing per his lawful Attorney
Samuel Obuobi

VRS

SALIKI WATAALA **DEFENDANT**

JUDGMENT

Plaintiff filed a Writ of Summons and Statement of Claim at the registry of this Court on the 23rd day of November, 2021 and sought the following reliefs:

1. A declaration to the parcel of land situate, lying and being at Dodowa in the Region aforesaid, and containing an approximate area of 0.66 Acre or 0.28 Hectare more or less and bounded on the North-East by Assignor's land measuring 139.8 feet more or less on the South-East by proposed road measuring 199.8 feet more or less on the South-West by Assignor's land measuring 146.4 feet more or less on the North-West by Assignor's land measuring 203.5 feet more or less.
2. An order for recovery of possession.
3. An order of perpetual injunction against the Defendant, his assigns, agents and workmen.
4. General damages for trespass.
5. Costs, including legal fees.

6. Any further order or orders.

Defendant never filed any defence and although several hearing notices were issued for him to appear, he failed to appear in Court.

In a Statement of Claim filed alongside the Writ of Summons, the Plaintiff averred that by a Deed of Assignment in 2014 between himself and Overtaken Company Limited, he obtained a parcel of land from Overtaken Company Limited who had their grant from the Nana Odei-Kesse family of Obosomase, Akuapem of which he went into immediate possession by erecting a four corner wall and pulled down mangoes and palm trees that were on the land. Plaintiff claimed he later constructed a wooden structure and foundation footings for four stores to be built.

Plaintiff claimed that before he purchased the land, he made his lawful attorney conduct a search at the Lands Commission to ascertain the owner of the land, which search confirmed his grantors as the owner. Plaintiff claimed that his neighbours including one Mr. Nartey all acquired their land from the same grantor and are peacefully occupying their lands.

Plaintiff further averred that his parcel of land is situate, lying and being at Dodowa in the Region aforesaid, and containing an approximate area of 0.66 Acre or 0.28 Hectare more or less and bounded on the North-East by Assignor's land measuring 139.8 feet more or less on the South-East by proposed road measuring 199.8 feet more or less on the South-West by Assignor's land measuring 146.4 feet more or less on the North-West by Assignor's land measuring 203.5 feet more or less.

The nub of Plaintiff's case is that on the 12th day of November, 2021, Defendant trespassed unto his land and cleared the rest of the land Plaintiff's attorney had started weeding. Plaintiff claimed his attorney reported the Defendant to the Dodowa Police Station and he was advised to continue working on the said land. That when his attorney went unto the land the following day with his workmen, Defendant came unto the land with about fifteen land guards and other people and prevented Plaintiff's workmen from working on the land. Plaintiff averred that he reported same at the Police Station and the Police came unto the land, ensured peace and invited Defendant to the Police Station who is yet to honour same.

Plaintiff finally claimed that all attempts to stop the Defendant from going unto his land has proved futile hence this action and claimed against the Defendant for a declaration of title to the parcel of land situate, lying and being at Dodowa in the Region aforesaid, and containing an approximate area of 0.66 Acre or 0.28 Hectare more or less and bounded on the North-East by Assignor's land measuring 139.8 feet more or less on the South-East by proposed road measuring 199.8 feet more or less on the South-West by Assignor's land measuring 146.4 feet more or less on the North-West by Assignor's land measuring 203.5 feet more or less, an order for recovery of possession, an order of perpetual injunction against the Defendant, his assigns, agents and workmen, general damages for trespass, costs, including legal fees and any further order or orders.

When the case was called in Court, the Defendant failed to make an appearance. The Court ordered that hearing notices be served on him to appear. Notices were duly served on the Defendant severally by the Plaintiff which were duly proved to have been served on the defendant. Yet, he failed to appear in Court or file any processes in defence of the Plaintiff's claims. Upon his failure to comply with the orders of the Court and further failing to appear before the Court upon the service of series of notices on him, the Court

assumed that the Defendant did not intend to mount any defence to the action and proceeded with the trial.

At the close of filing of written statements, the issues which the Court tabled for determination in this matter are:

1. Whether or not the parcel of land situate, lying and being at Dodowa in the Region aforesaid, and containing an approximate area of 0.66 Acre or 0.28 Hectare more or less and bounded on the North-East by Assignor's land measuring 139.8 feet more or less on the South-East by proposed road measuring 199.8 feet more or less on the South-West by Assignor's land measuring 146.4 feet more or less on the North-West by Assignor's land measuring 203.5 feet more or less is the property of Odoi Kesse Family.

2. Whether or not the Odoi Kesse Family sold the said land through Overtaken Co. Ltd. to Plaintiff

3. Whether or not the Plaintiff went into possession and put up a building/wooden structure on the land.

4. Whether or not the Defendant trespassed on Plaintiff's land and weeded same.

5. Whether or not the Defendant was entitled to enter into possession of the land and weed thereon on the land without the consent of the Plaintiff.
6. Whether or not Plaintiff is entitled to the claims as endorsed on her Writ of summons.

As I stated above, this is a case for declaration of title to land. As such, the Plaintiff bore the onerous burden to prove all that he asserted. It has been held by the Supreme Court in the case of **Abbey and others v Antwi V [2010] SCGLR 17** to the effect that in an action for declaration of title to land, the Plaintiff must prove on the preponderance of probabilities acquisition either by purchase or traditional evidence, or clear and positive acts of unchallenged and sustained possession or substantial user of the disputed land.

The Evidence Act, 1975 (NRCD 323) states among others that the onus of producing evidence of a particular fact in civil cases is on the party against whom a finding of fact would be made in the absence of further proof: see Section 17(a) and (b) of NRCD 323.Section 17(a) and (b) of NRCD 323 therefore reads:

17. Allocation of burden of producing evidence

Except as otherwise provided by law,

(a) the burden of producing evidence of a particular fact is on the party against whom a finding on that fact would be required in the absence of further proof;

(b) the burden of producing evidence of a particular fact is initially on the party with the burden of persuasion as to that fact.

It is also a basic principle of law 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 a fact is more reasonable than its non-existence. This is the requirement of the law on evidence under sections 10 (1) and (2) and 11(1) and (4) of the Evidence Act, 1975 (NRCD 323).

The burden of producing evidence has been defined in Section 11 (1) of the NRCD 323 as follows;

> "11 (1) For the purpose 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".

This burden to produce evidence is thus not static but could shift from party to party at various stages of the trial depending on the issue asserted. This provision on the shifting of the burden of proof is contained in Section 14 of NRCD 323 thus:

> "14 Except as otherwise provided by law, unless 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 that party is asserting".

This position of the law on evidence is confirmed in the case of **In Re Ashalley Botwe Lands, Adjetey Agbosu and others v Kotey and others [2003-2004] SCGLR 420 at page 425** where the Supreme Court per Brobbey JSC held that under the provisions of the Evidence Decree, 1975 (NRCD 323), the burden of producing evidence in any given case was not fixed but shifted from party to party at various stages of the trial depending on the issues asserted and/or denied. And unless the burden shifts, the Plaintiff bears the burden of proof on all matters raised by the Claim and the standard of proof is on the balance or preponderance of probabilities.

It is also settled law that when the burden of proof is cast upon a plaintiff he/she must prove his/her case and win on the strength of the case presented and not on the weakness of the defendant's case. This principle was first established by the case of **Kodilinye v Odu (1935) 2 WACA 336** but has been commented on and shaped in succeeding cases. In the case of **Asare v Appau II [1984-86] 1 GLR 599,** CA, it was stated that:

> "…the common run of land suits in the courts had, as the plaintiff, a person who claimed title to land, suing as the defendant, a person in possession of the land. Such a defendant needed not, and usually did not, seek any relief in the proceedings, being content with things as they were. In that event, the plaintiff

must rely on the strength of his own case, i.e. prove his title and not rely on the weakness of his opponent's, i.e. lack of title in the defendant, so that if the plaintiff failed to prove that he was entitled to have a declaration made of his title to the land, the action ought to be dismissed, leaving the defendant in possession of the land." See **Banga v Djanie [1989-90] 1 GLR 510, CA**

It however bears emphasizing that where the Plaintiff was able to lead cogent evidence to establish title to the land without any further evidence that raises a rebuttable presumption in his favour which ought to be dislodged by superior evidence. And that onus to dislodge the presumption is on the party against whom a ruling will be made if no evidence is led.

I have stated the obligations of proof placed on the parties. Having done so, I wish to run through highlights of the evidence led in the case. As I stated above, the Defendant did not make an appearance in court to defend the claims made against him by the Plaintiff despite the notices served on him. That notwithstanding, the Plaintiff was duty bound to prove his claims in terms of the standard of proof by a preponderance of probabilities to have judgment entered on the reliefs he claimed in her Writ of Summons. Plaintiff therefore led evidence in proof of the averments he had made. He then called one other witness in support of his case. The Plaintiff's evidence is to the effect that he purchased the land from Oddoi Kesse family who detailed Overtaken Company Limited to prepare the documents covering the land for him.

By reason of the matters aforesaid, the Plaintiff claimed as per the endorsement on his writ of summons.

At the close of the evidence for the Plaintiff, the Defendant did not appear to cross-examine him. The witness for the Plaintiff also gave evidence. However, no one appeared

to cross-examine the evidence on the testimonies given. As I have stated above, the Defendant continued to absent himself from appearing before the court to participate in the proceedings even though hearing notices were duly served on him to appear. In his continued absence, and after several warnings on the Defendant to appear without success, this court brought proceedings to an end having deemed it that the Defendant did not have any defence to the claims and gave its judgment. This line of action taken by this court is in line with the principle enunciated in a number of cases that where opportunity is offered to a party and he fails to take it, the court may go ahead to make a determination his failure notwithstanding. In the case of **Republic v Circuit Court; Dzakah [1984-86] 1 GLR 741** it was held that where the opportunity is given a party to appear in court and he fails to appear, he cannot raise a claim later that he was not heard. In such a case the party who fails to appear can be said to have deliberately abstained from taking advantage of an opportunity to be heard and no breach of the audi alteram partem rule can be said to have occurred. Earlier, the High Court in Sekondi had rightly held in the case of **Republic v Judicial Committee of Ahanta Traditional Council; Ex parte Bosomakora II [1982-83] GLR 231** as stated on the headnote that:

> "In the instant case, hearing notices were served on the applicant on two separate occasions and yet he failed to appear. These showed that the applicant was given sufficient notice and was aware of the hearing date. He could not therefore complain that the case was tried without him."

This principle of law has been affirmed in recent cases of the Supreme Court: **Republic v High Court (Human Rights Division), Accra; Ex Parte Akita [2010] SCGLR 374; Republic v High Court (Fast Track Division) Accra, Ex Parte Ayikai (Akosoku IV – Interested Party) [2015-2016] 1 SCGLR 289**.

Having been fortified in my belief that the action taken by this court was in line with the law as enunciated above, I proceed to determine the issues raised for determination per

the evidence available to the court. As I stated above, the only evidence available to the court was the evidence of the Plaintiff and his witness. The Defendant did not lead any evidence on his own. Be that as it may, this Court is enjoined to arrive at a decision on the evidence available, however inadequate. As was held in the case of **Yoguo v Agyekum [1966] GLR 482 at 505,** where some evidence of title is given by the plaintiff in a title case, no matter how indefinite or insufficient it may be, if not rebutted by a better or superior type of evidence, the trial court is perfectly entitled to consider it, and what credence or weight it decides to attach to it is entirely a matter for it. If it believes or accepts the particular piece of evidence on an issue of fact, its decision cannot be questioned unless it is based on a wrong principle of law. It has been held in a line of cases including **Abbey and others v Antwi V [supra]** that in an action for declaration of title to land such as this one, the Plaintiff, in order to succeed, must prove on the preponderance of probabilities acquisition of the land either by purchase or traditional evidence, or clear and positive acts of unchallenged and sustained possession or substantial user of the disputed land. Mention should also be made of the principle that a Plaintiff succeeds on the strength of the case presented and not on the weakness of the defendant's case. So as I stated above, notwithstanding Defendant's failure to lead any evidence in rebuttal of the claims made against him by the Plaintiff, yet the Plaintiff was under obligation to prove her case to warrant judgment being granted on his reliefs.

The Plaintiff led evidence through his Attorney one Samuel Obuobi who helped the Plaintiff to acquire a parcel of land from the late head of family Atta Odoi Panin. He attached a Power of Attorney which was marked Exhibit 'A'. It is the case of the Plaintiff that his Attorney was directed by the head of family of Odoi Kesse family, the late Atta Odoi Panin to go to the Overtaken Company Ltd. to for an indenture which was duly prepared and tendered as Exhibit 'B'.

Upon tendering a documentary proof of title to the land, I am of the view that the Plaintiff succeeded in proving title to the land. I think that the Plaintiff's led sufficient evidence to establish undisputed acts of possession of the land prior to its demolishing by the Defendant. The first point worthy of note is that the Plaintiff proved that he acquired the land through the late head of family of Odoi Kesse family of Obosomase who instructed the Overtaken Company Ltd. to prepare the documents covering the land for him. Indeed the indenture Exhibit 'B' was signed between Overtaken Company Ltd. and Plaintiff. The Plaintiff's witness one Emmanuel Opare (PW1) asserted that he is a Principal member of the Odoi Kesse family and has Power of Attorney to represent the family. PW1 tendered Exhibit 'C' i.e. the Power of Attorney from the Odoi Kesse family. PW1 also led evidence that his family had sold the land to Overtaken Company Limited whereupon the said company is indebted to the Odoi Kesse family so every land the family sold, they detailed Overtaken Company Ltd. to prepare the documents i.e. indenture for the purchaser. He also affirmed that the Plaintiff exercised control over the property to the knowledge of the Defendant, until sometime in 2021 when the Defendant trespassed on same. PW1 tendered Exhibit 'D' an indenture between Odoi Kesse Family and Overtaken Company Ltd.

These assertions made by the Plaintiff and corroborated by the witness from the Odoi Kesse family were not challenged by the Defendant in anyway. It is therefore deemed as accepted as a fact. This Court thus finds as a fact that the land was acquired by Plaintiff through his Attorney from the Odoi Kesse family of Obosomase and prior to the Defendant's trespass, Plaintiff was in effective possession and control thereof. If the indenture was meant to prove title to the land, then I'm convinced that in law, it has potency to prove title to land. An indenture does confer title to land on an individual. A receipt is mostly issued to provide a purchaser or a customer with a proof of payment. It only confirms receipt of payment. It does not on its own transfer title to land. A site plan

as well only depicts a piece of land on paper. See the case of **Kotey v Koletey [2005-06] SCGLR 368**. So, without more, Exhibit 'B' is an instrument affecting land. It therefore does carry the potency to transfer title in land.

I therefore find baffling that the Defendant has trespassed onto the property and weeded same thereon without recourse to the plaintiff who is the rightful owner.

On the available evidence, I find plaintiff's claim to the property proved. I find that the land was acquired by Plaintiff through his Attorney. I find that Plaintiff went into possession of the land when he cleared same of weed and mango trees and I find that the Defendant has weeded the land without the consent of the Plaintiff. I find that Defendant has no title to the disputed land and his trespass thereon was done without any claim of right. Having made the findings above, I hold that the Plaintiff was able to prove on a preponderance of probabilities his claims. From the foregoing and on the totality of the evidence, the Plaintiff was able to discharge the burden of proof on him. He has been able to satisfy me on all the evidence and he succeeds on his reliefs accordingly.

It is trite law that when trespass to land was proved or admitted, damages flowed as a matter of legal consequence. See **Hassan v Karssardjian Construction Limited, Tamale (1964) GLR 370**. It has also been held that proof of title was not required in order to succeed on a claim for damages because the law did not require that a person in possession could not have the possessory remedy of damages unless he/she proved title. Trespass was a wrong to possession and one of the known remedies for trespass was damages. There is undisputed evidence of acts of trespass committed by the Defendant. The Defendant is said to have trespassed unto the land and weeded the land and later came unto the land with about fifteen land guards and other people and prevented Plaintiff's workmen from working on the land. That act of weeding could not have been done lawfully since the building was not Defendants. Such acts perpetrated without recourse to law have been condemned and punished by the courts. So, in the case of

Mahama v. Kotia & Others [1989-90] 2 GLR 24, where the Plaintiff sued the Defendants for the demolition of her building, the Court of Appeal held that in addition to the replacement value of the building, the Plaintiff was also entitled to damages for being deprived of the use of her building. Also in the case of **Ayisi v. Asibey III & Others [1964] GLR 695 @ 696-7**, the Supreme Court held that even in damages for trespass, exemplary damages could be awarded in addition to the normal nominal and actual damages suffered. The Court held as follows:

> "In assessing damages for trespass consideration should be taken not only of the extent of the land on which the trespass had been committed by the individual defendants, but also the length of time that the plaintiff had been wrongfully kept off the land.…"

From the unchallenged evidence led by the Plaintiff in this case, I hold that Defendant committed gross acts of trespass against the Plaintiff by entering the land and weeding same without the consent of Plaintiff and also using fifteen land guards against the workmen of the Plaintiff driving them away from the land. As such the Plaintiff is entitled to damages for trespass for deprivation of use of the land since 2021.

On the totality of the evidence on record, the Plaintiff succeeded in proving his claims against the Defendant. I enter judgment for the Plaintiff in terms as follows:

i) Judgment is hereby entered for the Plaintiff on the reliefs endorsed on his Writ of Summons. I hereby declare title to the piece of land described in paragraph 7 of Plaintiff's Statement of Claim and relief (a) on Plaintiff's Writ of Summons and order recovery of possession of the said land as prayed.
ii) It is further ordered that the Defendant by himself, his assigns, agents, privies, and representatives be and are hereby restrained from having anything to do with the disputed land which has been declared the property of the Plaintiff herein.

iii) I enter judgment for the Plaintiff on his claim for damages for trespass. General damages were normally said to be at large and their quantification was peculiarly within the province of the court. Given the nature of the trespass, named above, I would award a reasonable sum of GH¢30,000 as general damages against the Defendant.

iv) Title to the land has been declared in the Plaintiff.

Given the nature of the claims and the length of time taken to conclude the hearing, I assess costs of GH¢15,000 against the Defendant in favour of the Plaintiff to cater for the expenses incurred in prosecuting the case.

(SGD.)

HER WORSHIP BRIDGET AKPE AKATTAH

DISTRICT MAGISTRATE

COUNSEL: Esther Korkor Asante Ahenkorah, Esq. for the Plaintiff