

GHANA / JUDGMENT

DANQUAH VRS AMOAH (A1/35/2019) [2024] GHADC 289 (30 July 2024)

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CORAM: HER HONOUR (MRS.) ROSEMARY EDITH HAYFORD, CIRCUIT Formatted: Font: Palatino Linotype, 12 pt JUDGE SITTING AS ADDITIONAL MAGISTRATE, DISTRICT COURT EJISU ON Formatted: Line spacing: 1.5 lines 30TH JULY, 2024

SUIT NUMBER A1/35/2019 PRINCELLA BOATEMAA DANQUAH - PLAINTIFF V FELICIA AMOAH - DEFENDANT
..... TIME: 9:22 AM PLAINTIFF - PRESENT DEFENDANT - ABSENT

JUDGMENT

Plaintiff caused a Writ of summons to be issued against Defendant on the 17th of May, 2019 claiming the reliefs below:

1. A declaration that all that piece and parcel of plot numbered 29 Block B measuring approximately 100ft x 100ft situated and being at Ekyem near Ejisu on Ekyem Dayeya 1 Stool lands opposite Solak Herbal Centre in the Ashanti Region of the Republic of Ghana is the legitimate and jointly acquired property of Plaintiff and her deceased husband
2. General damages against Defendant for trespass.
3. Recovery of possession.
4. Perpetual injunction restraining the Defendant assigns, workmen, representatives, customary successors and persons who might claim title through or under the defendant from having any further dealings with Plaintiff's property. On 11/6/2019 when the matter was called in court for the first time one Kingsley Opoku representing the defendant, sought the leave of the court to attempt a settlement however settlement broke down. The court differently constituted thereafter on 28/6/2019 ordered the parties to file their written statements (pleadings). The plaintiff filed her Statement of Claim on 18/7/2019 claiming the reliefs above and served same on the defendant. Defendant also filed his Statement of Defence on 22/07/2019 denying the averments of the Plaintiff and counterclaimed against

the Plaintiff as follows: a. Declaration of title to the remaining one-half (1/2) land, plot 29 block 'B'; the portion of land lying located and situated at Ekyem near Fumesua in the Ashanti region. b. c. Recovery of possession of the said land cited in paragraph (a) supra Perpetual injunction restraining the Plaintiff her agents, assigns, relatives, workers and all those claiming title through her to the described one-half plot in paragraph (a) supra. d. Compensation for causing wastage of concrete mortar as a result of Plaintiff using the Ekyem chief to stop the usage of the already mixed concrete mortar for the day's work. e. General damages. 2 f. Cost g. Any other reliefs as this Honourable Court may deem fit On the 22nd of July 2019, the parties were ordered by the court to file their witness statement within 14 days and the suit was adjourned to the 9th of August, 2019. On the return date Counsel for the defendant and the Plaintiff then unrepresented intimated to the court the parties were attempting settlement once again. The court obliged the parties and granted them an extension of time within which to file their witness statement. The suit was adjourned to the 23rd of August, 2019. On the return date, the Plaintiff prayed to the court to discontinue the matter. Consequently, the suit was struck out as discontinued. Subsequently, upon an application filed by the defendant, her counter-claim was relisted on the 3rd of September, 2019. The Plaintiff was also granted leave to file a Reply and Defence to Counterclaim on the 8th of February, 2021. Technically the filing of the Reply was needless since there was no statement of claim in place. By the time the hearing commenced on the 4th of April, 2022, both parties had filed their respective witness statements. In view of the fact that the Plaintiff discontinued her claim, the counterclaim of the Defendant was what was before the court. therefore the defendant was made to start. It is further worthy of note that the Plaintiff also did not testify but exercised her right to cross examine the defendant who had to prove her case. In this judgment therefore, the defendant who is now Plaintiff in the Counterclaim will be referred to as "Plaintiff" and the original Plaintiff now the Defendant to the Counterclaim will be referred to as "Defendant." THE CASE OF THE PLAINTIFF IN THE COUNTERCLAIM 3 The Plaintiff per her counterclaim. says that she purchased the disputed land with blocks estimated to be about 1,500 from one Mr. Fred Osei, the ex-husband of the Defendant sometime in 2016 but commenced building thereon in the year 2019. Plaintiff avers that prior to the acquisition of the disputed land, she was shown a site plan and an allocation paper bearing the names of the said Osei and Defendant. She interrogated and she was told by said Osei that he personally acquired the said one plot but requested that the documents should bear the names of himself and the Defendant and that the mere inclusion could not prevent him from disposing of the said parcel of land. The plaintiff further says that he visited the land to conduct further investigation but was informed by some people that the land belonged to the said Osei. She was further told that the cement block on that land also belonged to the said Osei. Plaintiff avers that after paying for the said land Osei gave her some documents and told her he had divorced the Defendant. Two years thereafter she decided to construct a building on the disputed land and that brought her into contact with the Defendant on phone. According to her, there was only a disagreement regarding the cement block and nothing on the disputed land. Subsequently, the Chief of the town prevented her workers from filling the dugout foundation with the concrete mortar her

workers had prepared thereby causing waste and loss to her. It is the case of Plaintiff that the chief caused the halt of the said work based on the misinformation by Defendant. The Chief later declined to intervene or interfere and advised the parties to do as they deemed fit. Plaintiff avers that the claim of Defendant is frivolous, vexatious and unmeritorious and prays for same to be dismissed in limine with cost for causing delay to her project. The plaintiff called one Seidu Awini as a witness. However, his evidence was expunged from the records after he failed to attend court to be cross-examined. The plaintiff also subpoenaed one commissioner of oaths, Mr. Charles Fofie, whose evidence was taken vova vaca. The plaintiff tendered the following exhibits: Formatted: Line spacing: 1.5 lines 1. Exhibit A - Receipt of payment dated 10th September, 2016 2. Exhibit B - Statutory Declaration by Mr. & Mrs. Fred Osei, Princella Boatema Danquah dated the 7th of September, 2016 THE CASE OF THE DEFENDANT TO THE COUNTERCLAIM Defendant to the counterclaim, a nurse averred that she and her deceased husband purchased the disputed land sometime in 2002 through one Agya Sei for a consideration of GH¢4,000.00. The sale was subsequently confirmed by the Ekyem Formatted: Font: (Default) Times New Roman, 12 pt stool. The chief then gave the Defendant and her deceased husband an allocation note Formatted: Font: Palatino Linotype, 12 pt in their joint names. Defendant avers that they immediately went into possession and by 2011 they had built a three-bedroom house on a portion of the land, leaving the other undeveloped portion which had about 1,500 blocks thereon. It is the case of the Defendant that her husband died on the 31st of August 2017 thereby making it impossible for them to commence development on the other portion of the land. It is further the case of Defendant that Plaintiff has recently trespassed unto her land and commenced development on the undeveloped portion with the justification that she bought same from Defendant's deceased husband, a claim Defendant denies and says any purported sale by Plaintiff was null and void as same was done without her 5 knowledge. In the course of the development by Plaintiff, the chief who knew Defendant and her husband to be the legitimate owners of the plot approached Plaintiff and ordered her to stop working on the disputed land. Later the Chief attempted to resolve the matter between the parties however, left it for the parties to do that themselves. Defendant avers that Plaintiff still unjustifiably maintained she is the owner of the disputed property. The Defendant says the Plaintiff in the counterclaim is not entitled to her counterclaim. At the end of the trial, the only issue for determination was : 1. Whether or not the Plaintiff in the counterclaim is entitled to her claim 2 BURDEN OF PROOF The standard burden and persuasion of proof in civil matters including land are captured under sections 11(4) and 12(1) of the Evidence Act 1975 (NRCD 323). The relevant provisions provide: “11(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.... 12(1) Except as otherwise provided by law, the burden of persuasion requires proof by a preponderance of the probabilities.” WHETHER OR NOT THE PLAINTIFF IN THE COUNTERCLAIM IS ENTITLED TO HER CLAIM The learned Samuel Marful-Sau, JSC (as he then was) in his book “A Practical Guide to Civil Procedure in Ghana” has this to say on counterclaims and their effects. 6 “A counterclaim is a cross action

even though it is in the same case. In the event that the Plaintiff's action is struck out, a Defendant who has a counterclaim may still pursue the counterclaim against the Plaintiff whose action has been struck out. An original Plaintiff in an action with a Counterclaim becomes a Defendant to the Counterclaim and the Defendant in the original case becomes a Plaintiff in the Counterclaim. A Counterclaim, therefore, is an independent cross-action that can be pursued on its own." In *Sasu Bamfo V. Simtim* [2012] 1 SCGLR 136 at 155, Rose Owusu JSC stated "A counter-claim is a different action in which the defendant, as a counter claimant, is the Plaintiff and the plaintiff in the action becomes a defendant. In the instant case, where both parties were seeking a declaration of title, recovery of possession and perpetual injunction in respect of the disputed piece of land, each of them bore the burden of proof and persuasion to prove conclusively, on a balance of probabilities, that he was entitled to the reliefs claimed. Thus section 11(1) of the Evidence Act 1975 (NRCD 323), enjoins the defendant in its capacity as a plaintiff in the counterclaim to introduce sufficient evidence to avoid a ruling on the issue against him" In this instant case the original Plaintiff is now Defendant to the Counterclaim and the Defendant is now Plaintiff in the Counterclaim It is the case of the Plaintiff in the Counterclaim that she purchased the disputed land from Mr. Fred Osei, the ex-husband of the Defendant to the counterclaim. She avers that when she acquired same she was initially given a site plan that bore the names of the said Osei and the defendant. Upon seeing same, she enquired why the two names were embossed and she was informed by the said Osei that he and the defendant to the counterclaim were divorced and that according to him he was the one who purchased the said property and decided to include the name of the defendant to the counterclaim. 7 A claim vehemently denied by the defendant to the counterclaim. Below is what transpired during cross examination of the Plaintiff in the Counterclaim Q. In your paragraph 13 of your witness statement, you said the late Mr. Fred Osei showed you a document before the alleged sale which bore the name of Mr. Fred Osei and the Plaintiff. I am putting it to you that you knew the land belonged to the late Fred Osei and the Plaintiff at the time you allegedly purchased the land. A. He showed the document to me and I asked him why there were two names on the land documents. He told me he acquired the land personally but only added the Plaintiff's name to it as his wife but at the time they were no longer married. Myself, Mr. Fred Osei and my brother Kingsley Opoku then together went to the chief of Ekyem but we did not meet the chief. He had travelled.... Xxx Q. Your evidence that the Plaintiff and the late Mr. Osei were divorced was a figment of your own imagination. A. That is not so. Mr. Osei told me he and the Plaintiff were divorced It is to be noted that the Plaintiff in the counterclaim has made many statements which ordinarily merit a response but they are directed at Fred Osei who is now deceased and is unavailable as a witness in terms of S. 116 (e) (iii) of the Evidence Act, 1975 (NRCD

- 323) and therefore cannot appear to tell his side of the story as to whether he purchased the said property all by himself and solely for himself and that the parties were divorced. In the unreported case of *Eric Oduro & Another v Andriana Kwaah*, Suit No.: MMISC 755/2014 dated 22nd October, 2018, Ackaah Boafo J, (as he then was) had this to say on the evidence

of a dead person "the settled rule of law is that the evidence involving a deceased person is always received and treated with extreme circumspection and suspicion. The policy rationale is that the deceased, unlike the Biblical Lazarus, cannot come out of his grave to tell his story, to assert any claim or disprove one. Proof must therefore be strict and utterly convincing. See: MOSES v ANANE (1989-90) 2 GLR 694 C/A as adopted and applied by Brobbey JSC in APEA v ASAMOA (2003-2004) SCGLR 226 at 241. See also GRACE ASANTEWAAH v. MARK AMANKWAH ADDO [2008] 1 GMJ 2009 @ page 212." The law is that the person who is asserting the positive bears the burden to prove what she asserts See: Section 11 NRCD 323 (supra). In this case, it is the Plaintiff in the counterclaim who bears the burden to prove that there was a divorce. However, before this court, no such evidence was led. Under cross-examination on the 14th of April, 2022 the Plaintiff in the counterclaim indicated that she was in the company of his brother Kingsley and said Osei when all the transactions and averments were made but the Plaintiff failed to call said Kingsley to testify. My view is that this man was a material witness and ought to have been called but he was not. The learned S.A Brobbey states at page 378 of his book PRACTICE & PROCEDURE Formatted: Font: Palatino Linotype IN THE TRIAL COURTS & TRIBUNALS OF GHANA thus; "In civil proceedings, the consequences of a party's failure to call a material witness Formatted: Font: Palatino Linotype, 12 pt depend on the onus of proof placed on him by the facts of the case. If a party has to establish his case and therefore assumes the onus of proof, he must call witnesses material to establish that case. In the event, his failure to call a material witness may result in a ruling being given against him for the reason that he has failed to establish that case: See NRCD 323, s11 Owusu V Tabiri [1987 -88] 1 GLR 287" at 9 Formatted: Line spacing: 1.5 lines In the absence of any concrete evidence that the defendant was divorced, I fail to give credence to the claim of Plaintiff. The Plaintiff tendered Exhibits "A" and "B", a receipt and a statutory declaration respectively bearing the names of both the said Mr. Osei (deceased) and the defendant. On the face of the document, one can clearly see that the disputed property belongs to both parties. Yet in the evidence of the Plaintiff, she says the property was not a joint property but belonged to the deceased alone. However, a critical look at both exhibits speaks otherwise and undermines her case. I quote part of Exhibit B below "STATUTORY DECLARATION BY MR. & MRS. FRED OSEI, PRINCELLA Formatted: Line spacing: 1.5 lines BOATEMA DANQUAH AS TO THE TRANSFER OF HALF PLOT NO. 29 BLOCK 'B' EKYEM/ASHANTI TO FELICIA AMUAH (emphasis mine) We, MR & MRS FRED OSEI, PRINCELLA of P. O. Box 1953, E.C.G. Kumasi in the Ashanti Region of the Republic of Ghana do hereby declare solemnly and sincerely declare as follows:

1. That we are the DECLARANTS herein and citizens of Ghana both by birth and nationality
2. That, we are the real and legitimate owner of building Plot No. 29 Block 'B' located at Ekyem/Ashanti on Ekyem Dayeya Stool lands..." The above clearly stipulates that the disputed property is owned by both the deceased and the defendant to the counterclaim. It is trite law that where the oral evidence of a party is at variance with any documentary evidence in existence, the court has to lean favourably towards the documentary evidence. See: Hayfron

v Egyir [1984-86] GLR 682, CA 10 From the above therefore it can be seen that the Plaintiff was put on notice that the property was in the joint names of the defendant and her deceased husband. The presumption was that the property was jointly acquired unless the presumption was rebutted but there is no evidence before this court to suggest same. To my mind, if she had been a bit vigilant and conducted proper investigations and searches she would have realized that the defendant had an interest in the disputed property. Whether or not the deceased could unilaterally dispose of the disputed property without the authority and consent of the Plaintiff. Analyzing Exhibits A and B, it can be seen that even though they bore the names of the defendant and the late husband both documents were signed by only the deceased. Counsel for the Plaintiff in the counterclaim in his address submitted that since the allocation note was signed by only the deceased then it was proper for the deceased to have signed both Exhibits. It is important to note that the said allocation paper that counsel is alluding to was never tendered in evidence and did not form part of the records. Counsel further made references to the witness statement of the defendant dated 9/6/2021, unfortunately, that was also struck out on the 14th of May, 2021. Again, Counsel seems to suggest that the Plaintiff should have proved her contribution. I humbly beg to differ. The disputed property was acquired during the subsistence of the marriage for which reason the documents bear their names. There was therefore no need for the defendant to have proved any contribution. On the face of it, anyone seeing this document would clearly know that the said property belongs to the parties and it was a jointly acquired property. The Supreme Court per Date Baah JSC (as he then was) had to this to say in the case of Paul Adomako & Another v Mrs Owusu Asiedu (2008) JELR 68440 (SC) CIVIL Formatted: Font: Palatino Linotype APPEAL NO. J4/25/2007 · 7 MAY 2008 · GHANA 11 “alienation by a joint tenant of his or her interest without the knowledge or consent of the Formatted: Font: Palatino Linotype, 12 pt other joint tenant will usually be an act of severance by which the joint tenancy is converted into a tenancy in common. An act of severance determines the joint tenancy.” The Learned Justice continued Formatted: Line spacing: 1.5 lines “A case illustrating this proposition is First National Securities v. Hegerty [1985] 1 QB 850. In this case, a husband and a wife had purchased a house as joint tenants, with a building society mortgage. Subsequently, the husband alone, purporting to act on behalf of both himself and his wife, applied for a loan and executed a legal charge over their joint property. On both the loan application and the legal charge, the wife's signature was forged and she was unaware of the transaction. The husband fell into arrears on the loan application and the lender obtained judgment against him. The lenders took steps in the execution of this judgment. The wife, who had meanwhile filed for divorce, applied, in her divorce proceedings, to have her husband's interest in the property transferred to her. It was in this context that Bingham J (as he then was) said at p.854: “.. (2) Since the wife was not a party to the loan agreement with the plaintiffs she incurred no liability in respect of it. The agreement took effect as if it was the husband's alone.

- (3) Since the wife did not execute the legal charge to the plaintiffs she incurred no liability under that instrument either. It does however seem to me that the instrument may, none the less, have had two effects. If the husband and wife were up to, then equitable as well as legal joint owners of the house I think that this disposition by the husband was a sufficient act of alienation to sever the beneficial joint tenancy and convert the husband and wife into tenants in common.” 12 Another English authority to similar effect is: *Cedar Holdings Ltd v. Green* [1981] Ch. 129 at p. 138, where Buckley LJ said: “The plaintiffs' contention in the present case is that either by the legal charge itself, or by a pre-existing contract to create the legal charge arising out of the written application for a loan and the plaintiffs' acceptance of it, the first defendant effectively severed the joint tenancy in the proceeds of sale subsisting under the statutory trusts so as to become entitled to an undiluted half-share of the proceeds of the sale. If the effect of either the legal charge itself or of a contract to create the legal charge was, in the one case, to occasion a disposal by the first defendant of his beneficial interest under the statutory trust or, in the other case, to oblige the first defendant to dispose of that interest, there can, I think, be no doubt that the legal charge or the contract would have effected a severance of the joint beneficial ownership [sic]. The legal charge or the contract would constitute an act by one of the joint owners operating upon his own share. This would fall within the first of the three methods of severance mentioned by Page Wood V-C in *Williams v. Hensman* (1861) 1 John and H 546, 557. The effect of such an act is to destroy the unity of interest theretofore existing between the joint owners and so to put an end to the joint ownership.” Applying the above to the instant case, it means that by the deceased selling a portion of the land to the Plaintiff in the counter-claim, it severed the joint tenancy between them to tenants in common. However, the law is that in Ghana per Section 14 (3) of the Conveyancing Decree 1973 (NRCD 175) which was the law in force at the time of the transaction, where a grant of land is made to two or more persons, it is presumed to be made to them as tenants in common unless a contrary intention is expressed in the grant. The section provided 13 “14. (1) A conveyance of an interest in land may operate to pass the possession or right to possession thereof, without actual entry, but subject to all prior rights thereto.
- (2) A conveyance of an interest in land to a corporation solely by its corporate designation without words of limitation shall pass to the corporation the whole interest which the transferor had power to convey unless a contrary intention appears in the conveyance.
- (3) A conveyance of an interest in land to two or more persons, except a conveyance in trust, shall create an interest in common and not in joint tenancy unless it is expressed in such conveyance that the transferees shall take jointly, or as joint tenants, or to them and the survivor of them or unless it manifestly appears from the tenor of the instrument that it was intended to create an interest in join BJ da Rocha and CHK Lodoh in their book *Ghana Land Law and conveyancing*, second edition @ page 269 state that “a tenancy in common may be determined by (a) partition (b) sale (c) the acquisition by one tenant..” From the analysis so far, at the time Mr. Osei died the property was a joint property. Per the authorities quoted above this metamorphosed into a tenancy in common. This means that Mr. Osei having sold

half of the property, he severed the joint interest and sold his portion (50%) since not all the entire property was sold. As the records would show the signatures on both documents were not challenged at all by the defendant. I therefore find that the sale to the plaintiff by said Mr. Osei severed the joint tenancy to tenancy in common and that the deceased sold his portion of the entire property. It is noteworthy that this court is not oblivious of Sections 38(3) and 47 of the current Land Act 2020, Act 1036 which stipulates that spouses cannot sell jointly acquired property without the consent of the other party. However, the events of this case 14 predate the current Land Act. The sale was made in 2016 and the current Land Act was enacted in 2020. Thus per Article 107 of the 1992 Constitution, the law cannot be applied retrospectively. In the circumstance, I conclude the sale was proper and accordingly the counterclaim succeeds in part. The Plaintiff seeks compensation and damages. However, she has failed to prove to this court that the defendant is liable for any damage caused if at all. I am therefore unable to grant those reliefs. Reliefs “d”, “e” and “f” fail.

CONCLUSION

Having reviewed all the evidence and taking into consideration my analysis above, it is my conclusion that the Plaintiff (in the counterclaim) has adduced evidence to persuade the court to grant her some of the reliefs she seeks. I therefore enter judgment on some of the counterclaims as follows: 1. Plaintiff (in the counterclaim) is entitled to reliefs a, b and c of her claim 2. 3. Reliefs d, and e of the counterclaim are dismissed. There is no order as to cost. H/H ROSEMARY EDITH HAYFORD (MRS.) (SITTING AS ADDITIONAL MAGISTRATE) COUNSEL 15 BENNET NAKAAR FOR REV. SAMUEL GABORA FOR THE PLAINTIFF Formatted: Line spacing: 1.5 lines COUNTERCLAIMANT - PRESENT KOJO OWUSU ANSAH FOR THE DEFENDANT TO THE COUNTERCLAIM - ABSENT 16

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Prepared on 26 October 2026 · Esheria