

GHANA / JUDGMENT

AVOR VRS. BOTWE (A1/15/2023)

[2025] GHADC 9 (24 January 2025)

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COURT
District Court

CASE / FILE NUMBER
A1/15/2023

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IN THE DISTRICT COURT AT VAKPO HELD ON THE 24TH OF JANUARY 2025 BEFORE HER
WORSHIP COMFORT ASAMOAH SARPONG [Mrs.], DISTRICT MAGISTRATE SUIT NO. A1/15/2023
BEN KOFI AVOR ---- PLAINTIFF VRS EMMANUEL BOTWE DEFENDANT

JUDGMENT

The plaintiff's claims against the defendant are as follows:

- a. A declaration of title to all that piece or parcel of land situate, lying and being at a place known and called Vakpo Afeye, and bounded as follows:
 - On one side by the property of Abotsi Kuma
 - On the second side by the property of Thompson Obimpeh
 - On the third side by the property of Zagane Tega
 - On the forth side by the plaintiff's property
 - On the final side by the property of Gbogbowusu.
- b. Perpetual injunction restraining the defendants, their agents or privies from having anything to do on the Avor landed property.
- c. Recovery of possession.
- d. General damages for trespass.
- e. Costs. The plaintiff did not file a statement of claim but in the summary of the subject matter of the claim the plaintiff stated that in the 1990s the plaintiff sold a plot of land to the 1st defendant, and the 1st defendant made a part – payment and for that matter plaintiff did not issue a receipt in respect of the sale to the 1st defendant. That it was agreed that the receipt would be issued upon full payment of the purchase price by the 1st defendant [para. 3] That the defendant later approached the plaintiff that he was no longer interested in the land sold to him and demanded a refund of the part payment. That whiles plaintiff was organising

himself to pay the money to the defendant, the defendant went to sell the land to another person for Gh¢4,800.00 without the consent of the plaintiff. The plaintiff states that cautioned the defendant to desist from that conduct since he only made a part payment and had also said he was no longer interested in the disputed land. That in or about the year 2020 the defendant went to the plaintiff to demand for an amount of Gh¢8,000.00 as his part payment instead of the Gh¢40.00 he paid in the '90s. The plaintiff states that he accepted it and in view of that parties have been in a legitimate mutual agreement that title to the land has returned to the plaintiff. Then in early 2023 the plaintiff states he went on the land only to find some men erecting profile on the land. Upon enquiry the plaintiff was told that the defendant had sold the land to yet another person. The plaintiff therefore initiated the instant action for declaration of title to the disputed plot of land and a recovery of possession of same, among other reliefs. The defendant filed a statement of defence in response to the summary of the claim and stated that he acquired the disputed plot in 1991 and made a full payment for same. The defendant states that he took possession of the land and made a garden on same and fenced around it. He also planted palm seedlings on the boundaries. That after some time the paramount chief of Vakpo Traditional Area Togbui Gbogbolulu caused an announcement to the effect that all those who had acquired plots in the area must yield vacant possession. The defendant states that he informed the plaintiff who said he would work on the issue with the chief as they did not pay any compensation for the land. The defendant states that he demanded for the receipt from the plaintiff and the plaintiff promised to serve him with it but he failed. The statement denies that the defendant ever told the plaintiff that he was not interested in the land again. That when the defendant wanted to sell the land to one Moses Agbemaflé, the plaintiff told Agbemaflé that the price was Gh¢5,000.00 when the said man went to see the plaintiff to introduce him to the defendant. But the defendant reduced it to Gh¢4,500.00., and Agbemaflé counted an amount of Gh¢1,000.00 to the plaintiff who was the witness and the plaintiff in turn handed the money to the defendant. The defendant denies the plaintiff claim that the defendant resold the land to someone else, stating that it was the plaintiff who requested the defendant to sell a portion of the land to him but defendant did not. The defendant denied the plaintiff's claim and counter claimed for recovery of possession and general damages of Gh¢20,000.00 for causing financial loss to the defendant. In a reply to the statement of defence and counter claim the plaintiff stated that the defendant paid only Gh¢40.00 and failed to pay the balance. That when the defendant told him about the chief's warning concerning portions of land in that area , he intervened and told the defendant to develop the land but he failed to do so. The plaintiff replies that the defendant failed to pay the outstanding balance and that was why the defendant could not come for his receipt covering the sale of the land to the defendant. He admits in February 2023 the defendant called him on phone that he was sending a document for plaintiff to sign for him. He agreed but the said document did not materialise. The plaintiff admits taking the said Moses to the defendant for the sale of the disputed plot to Moses with the sole intention that the he would be paid the outstanding amount by the defendant but all to no avail. The plaintiff repeated his averment that the defendant told him he had no interest in the land once again late 2022

and demanded Gh¢8,000.00 as his part payment, and demanded an immediate part payment of Gh¢4,000.00 to perform a funeral. The plaintiff said he looked for the said amount but the defendant did not come for it. The plaintiff urged the court to dismiss the counter claim of the defendant for it is actuated by malice, greed and is in bad faith. The issues for determination are:

1. Whether or not the defendant made a part payment of the purchase price.
2. Whether or not the plaintiff is entitled to the claim he makes for a balance amount if any after 35 or so years of the sale of the land to the defendant.

3. Whether or not the plaintiff is entitled to repudiate the sale of the land to the defendant.
- THE EVIDENCE OF THE PLAINTIFF** The plaintiff testified and also called a witness. The plaintiff per his witness statement testified that he is the customary successor to the disputed land belonging to the Avor family. That somewhere in 1990, he sold the disputed land to the defendant for an amount of Gh¢70.00 and the defendant made a part payment of Gh¢40.00 outstanding Gh¢30.00. That the defendant one day told him he was not interested in the land again since it was under litigation with the chief and asked for a refund of the Gh¢40.00 part payment made. In view of that the plaintiff said he did not issue a receipt to the defendant till date. That a teacher approached him and showed interest in the land, and in order to refund the defendant's part payment to him he promised to issue the receipt to the teacher upon completion of the purchase price of Gh¢4,800.00. The teacher accepted that and made a part payment of Gh¢1,000.00. The plaintiff stated that the teacher later connived with the defendant and made full payment to the defendant without his consent. That the teacher also lost interest in the land and the defendant refunded the Gh¢4,800.00 to the teacher. In view of that the plaintiff stated that he took back the land and the defendant demanded for an amount of Gh¢8,000.00 which the plaintiff said he accepted and asked for time to pay to the defendant. That in January, 2023, the defendant authorised another person to build on the disputed land without his consent. That the land had been vacant for 27 years and he regularly cleared the land to avoid it becoming bushy. The statement ended that the defendant cannot claim to own the disputed land since he did not complete the payment for it and also said he was no longer interested in the land and asked for Gh¢8,000.00 as a refund. In cross examination the plaintiff admitted selling the land in dispute to the defendant but added that the defendant did not comply with their agreement and so he did not give the defendant a receipt. That the defendant only made a part payment of Gh¢40.00, outstanding Gh¢30.00. The plaintiff admitted the defendant has been farming on the plot sold to him. That when the Community gave a directive that no one should develop the area earmark for the market he resolved the matter and asked the defendant to develop the land as the others were doing but he failed to do so. The defendant then asked for a refund and also told the plaintiff that he could sell the land if someone showed interest. At this point the defendant tendered in evidence the letter the Traditional Council served him regarding the disputed land. The defendant put to the plaintiff that he stopped the blocks he was making after he was ordered to do so because he did not want to get involved

in litigation. The plaintiff admitted that and said the defendant had already told him to get a buyer so when he got one he sent him to the defendant and told the defendant that when the buyer paid for plot the defendant should pay the balance owed him and then he would issue a receipt for the it. The plaintiff admitted counting the Gh¢1,000.00 part payment Moses Agbemafle paid and then handed it to the defendant and told him that when the defendant gave him his share he would issue the receipt to Moses. That when Moses refused to take possession the defendant refunded the Gh¢4,800.00 and later said he would sell it for Gh¢8,000.00. the plaintiff said he told the defendant to come for Gh¢4,000.00 but he did not and later started building on the land. P. W.1 is Charles Asima. His brief testimony is that the land in dispute is part of the Avor family land and the plaintiff is the custodian of the land. That the plaintiff has not shown any receipt that the disputed land had been sold to the defendant. In cross examination the witness admitted that he is aware the defendant paid some amount of money to the plaintiff but not the whole amount. The defendant asked: Q “Are you aware of the number of year ago I purchased this land? A “Long ago. 1991. The defendant put to the witness that the plaintiff brought someone to him to buy the land. The witness rejected that claim and said the land did not belong to the defendant. THE CASE FOR THE DEFENDANT The defendant also testified and called a witness. The defendant’s testimony is that in 1991 he acquired a plot of land measuring 100 feet by 100 feet from the plaintiff at a cost of Six Hundred Cedis [now Gh¢60.00]. the plaintiff put him in possession and started cultivating a garden on it. He also planted palm on the boundaries as a demarcation. In 2002 the paramount chief of Vakpo Traditional Area Togbui Gbogbolulu through a letter invited him to the palace over the land. The defendant stated that the chief and his elders warned him not to build on the land for it fell within the land the community had acquired for a market. He informed the plaintiff and then asked for a refund of the money but the plaintiff promised to resolve the matter with the chief and his elders. The defendant stated that the market was built and fortunately it did not extend to his plot. He was still in possession because the plaintiff could not refund the purchase money. Then in 2018 the plaintiff asked the defendant if he was still interested in selling the land. The defendant states that he told the plaintiff that he was not in any gainful employment and so would want to sell the land. So the plaintiff sent a buyer [P. W.1] to him to buy the plot. He sold it for Gh¢4,800.00. Later P. W.1 came to report to him that there has been an announcement to the effect that no one should develop the land and so he demanded for his money. The defendant refunded the money to P. W.1. In 2022 the plaintiff approached him to express interest in the plot. The plaintiff offered Gh¢4,000.00 but he did not accept it saying he would take Gh¢8,000.00. the plaintiff accepted it but failed to make any payment. He then told the plaintiff that he was no longer selling the land and that he had decided to commence a building project on the land. He asked the plaintiff to give him the receipt covering the sale of the land but he refused so he bought a copy from the District Assembly for the plaintiff to sign but all attempts to get the plaintiff sign the form has been futile The defendant ended by stating that the plaintiff’s action is unlawful and that he validly acquired the plot from the plaintiff in 1991. In cross – examination the defendant stated that he paid for the land in issue and later the plaintiff approached him that there was a problem with

the one he sold to him and so he should come for a different parcel of land but he refused. That the plaintiff himself had earlier shown him two parcels of land including the one in issue and he settled on the one in issue. The defendant rejected the plaintiff's assertion that he made only a part payment of Gh¢40.00 for the land, adding that he made full payment of Gh¢60.00 up-front to the plaintiff. The plaintiff put to the defendant that the defendant would not get compensation from the chief because he did not have a receipt covering his plot. The defendant responded that he would not get any compensation from the chief because his plot was not used by the community as part of the market. The defendant rejected the plaintiff's assertion that he told the plaintiff to look for a buyer so that the plaintiff could refund the Gh¢60.00 paid for the land to him. He denied that the plaintiff asked for his share of the Gh¢1,000.00 part payment D. W.1 made when the land was sold to him. The plaintiff put to the defendant that the defendant came to him to sell the disputed land to him at Gh¢4,000.00. The defendant rejected that and said it was rather the plaintiff who approached him to sell the land to him at that but price but he refused saying another person had offered a higher price of Gh¢8,000.00. The plaintiff put to the defendant that they agreed for the plaintiff to make a part payment of Gh¢4,000.00 but the defendant sold the land to somebody else. The defendant rejected that assertion as untrue. He also rejected the assertion that the plaintiff said he would take part of the purchase money when the land was sold to D. W.1 as his balance because the defendant did not make a full payment for the land when he bought it saying he made a full payment the very day the plaintiff took him to the land to show him the boundaries, unfortunately there was no witness. In answering questions by the court the defendant said he acquired the land from the plaintiff in 1991 and the Committee stopped him from developing the land in the year 2000 but he was later allowed to develop same because he was told the plot he acquired did not form part of the land the Community acquired for the market. Then in 2018 the plaintiff led somebody to him to buy the land but the buyer later asked for a refund because of some issues on the land. The land is now in the possession of the defendant's son. D. W.1 is Moses Agbemafle, a teacher at Anfoega Senior High School. His testimony per the witness statement is that in 2018 he was looking for a plot of land to buy and a friend introduced him to the plaintiff. He approached the plaintiff and the plaintiff told him he owned the land but sold it to the defendant long ago. So the plaintiff took him to the defendant's house to bargain for the plot in issue on the 14th of August, 2018. The purchase price was Gh¢4,800.00 out of which he made a part payment of Gh¢1,000.00 in the presence of the plaintiff. That it was the plaintiff who counted the money and then handed it over to the defendant. He later made the full payment. Then the chief announced to the community that whoever has acquired parcels of land in the area should vacate the land because the place was earmarked for a community centre. He therefore went to the defendant and demanded a refund which the defendant paid to him. The witness ended that the transaction that took place for him to acquire the disputed plot of land indicated that the defendant owned the land which was previously owned by the plaintiff. In cross examination the witness said he did not pay the outstanding balance through the plaintiff but whenever he was making any payment he informed the plaintiff. After payment the defendant issued a receipt to him. The witness said the

defendant did not show him any document indicating that the land originally belonged to the Avor family. That it was the plaintiff who even told him he sold the land to the defendant some 20 or so years ago and led him to negotiate for the price at Gh¢4,800.00 with the defendant. The plaintiff did not tell him the defendant owed him and so part of the money should be given to him. That since the plaintiff led him to the defendant to negotiate for the price and also allowed the defendant to receive full payment for the plot then it meant the defendant had capacity to sell the land. He said no one stopped him from developing the plot but he decided not to continue if the land was involved with issues with the community. Even the plaintiff encouraged him to do his project but he did not want to get himself embroiled in litigation and that was why he approached the defendant for his money and he refunded it. EVALUATION OF THE EVIDENCE AND THE APPLICATION OF LAW The Evidence Act, 1975 [NRCD 323] under sections 10, 11[1] and 12 provides the obligation of a party in a civil suit in order to have a ruling in their favour. Section 10 that provides as follows: 10[1] For the purpose 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 tribunal of fact or the court .

- [2] The burden of persuasion may require a party to raise a reasonable doubt concerning the existence or non- existence of a fact or that he establishes the existence or non –existence of a fact by a preponderance of the probabilities or by proof beyond a reasonable doubt. Section 11 [1] For the purposes of this Act, the burden of producing evidence means the obligation of a party to introduce sufficient evidence to avoid a ruling against that party. Section 12 [1] Except as otherwise provided by law, the burden of persuasion requires proof by preponderance of 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 plaintiff admits that he sold the disputed land to the defendant in 1991 but denies that the defendant made full payment for the land. The plaintiff could not adduce any evidence to the effect that he demanded for the alleged outstanding balance and the defendant refused or failed to pay. The defendant has been in possession all these while and still the plaintiff did not demand for the balance or rescind the sale. The plaintiff even had a fine opportunity to rescind the sale when the defendant complained to him about the letter he received from the chief. The plaintiff assured the defendant that he would resolve the issue but he never made mention of an unpaid balance then, neither did he ask the plaintiff to vacate from the land for non- payment of the full purchase price. Sir Dennis Dominic Adjei in his book titled Land Law, Practice and Conveyancing in Ghana states at page 71 that a purchaser is required to pay for purchase price within the time agreed upon between the parties. Where the purchaser fails to pay for the entire purchase price, the vendor could sue for the enforcement of his lien over the property, sue for the property to be restored or sue for the property to be resold. The question is what time did the parties agree upon for the defendant to pay the outstanding balance if the defendant did not make full payment? The plaintiff failed to disclose any such

agreement to the court. Again when P. W.1 wanted a parcel of land to buy and approached the plaintiff it was the plaintiff who took the witness to the defendant as the owner of the disputed land. When the witness made a part- payment of Gh¢1,000.00, it was the plaintiff who collected the money from the witness and counted to check the correct amount and then handed it over to the defendant. According to the witness the plaintiff never demanded for the payment of any money to the plaintiff. All these instances prove that the defendant paid for the land in dispute and has been in possession by cultivating a garden on same. The fact that the plaintiff did not issue a receipt in respect of the land did not invalidate the sale since the plaintiff's own conduct in respect of the land is an acknowledgement that the defendant is the owner of the land. Section 3 of the Conveyancing Act, 1973 [Act 175] provides for transfers of interest in land which are exempted from writing requirement. Section 3[1] [h] provides for transaction of sale of land by oral grant under customary law. P. W.1 Charles Asima is a family member of the plaintiff. He admits the plaintiff is the custodian of the family property, but denying that the plaintiff had sold the disputed land to the defendant. The family did not seek to void the transaction since the witness said the plaintiff had not shown them any receipt. He however admits that the defendant paid some money to the plaintiff but not all, and had been in possession of the land since 1991. Therefore even though the transaction between the parties took place without witnesses, the plaintiff's family became aware of the presence of the defendant on the disputed land but raised no objection. The witness failed in his duty as a member of the Avor family to demand accountability from the plaintiff as to the full payment of the purchase price if the defendant did not make full payment as he claims. In any case plaintiff's case is statute-barred even if he had a good case. The Limitation Act, 1972 [NRCD 54] provides the time limits beyond which certain actions cannot be instituted in any court. If the defendant indeed owed the plaintiff sum amount of money out of the contract of the sale of the disputed land, the plaintiff could have sued to recover it within six[6] years. He failed to do so and so he cannot be seen to be claiming for the alleged balance some 27 years after. See section 4[2][b],[e]. Therefore in conclusion and on the balance of the probabilities it is my opinion that the plaintiff's action is frivolous, vexatious and unmeritorious. The action is dismissed with cost. The defendant in his counter claim seeks recovery of possession and general damages. On record there is no grant of an order for an interlocutory injunction and also no evidence that the plaintiff was on the disputed land to cause damage to any property of the defendant. In circumstance the court will award a minimal sum in damages for the defendant. An amount of Gh¢1,000.00 is awarded in damages. Cost of Gh¢3,000.00 is awarded in favour of the defendant. SGD..... COMFORT ASAMOAH SARPONG [Mrs.] (DISTRICT MAGISTRATE)

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Prepared on 29 October 2026 · Esheria