

GHANA / JUDGMENT

Andoh Vrs Kwame and 3 Others

[2023] GHAHC 97 (22 March 2023)

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22 March 2023

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IN THE SUPERIOR COURT OF JUDICATURE IN THE HIGH COURT OF JUSTICE HELD AT TEMA
ON WEDNESDAY THE 22ND DAY OF MARCH 2023 BEFORE HER LADYSHIP JUSTICE RITA
AGYEMAN-BUDU (MRS). Time: 9:22 am SUIT NO: E1/68/2020 BENJAMIN ANDOH ... PLAINTIFF VS

1. KINGSLEY KWAME ... DEFENDANTS
2. ASAFOATSE TORTIME
3. MR. SIMON. ===== PARTIES Plaintiff- Present Defendants-
Absent. LEGAL REPRESENTATION Ms. Naa Oyoo Quartey with Mr. Randy Arhin holding
brief for Mr. Charles Habiah for the Plaintiff - Present. Defendants not legally represented
=====

JUDGMENT

===== This action is essentially a land matter for which the Plaintiff is seeking among other incidental reliefs a declaration of title to land. 1 |E1/68/2020 The Plaintiff on the 29th of June 2020 filed the instant Writ of Summons against the Defendants herein praying for the following reliefs; (i) Declaration to all the piece of land situate, lying and being at Abe Korpe(Dawhenya) in the Dangbe West District in the Greater Accra Region of the Republic of Ghana and containing an approximate area of 0.20 Acre or 0.0 Hectare more or less and bounded on the North –East by Assignor’s land measuring 111.8 feet more or less, on the South-East by proposed road measuring 79.2 feet more or less, on the South West by proposed road measuring 115.0 feet more or less; on the North –West by Assignor’s land measuring 80.0 feet more or less as same is more particularly delineated on the plan in favour of 1st Plaintiff. (ii) Recovery of possession and further Demolition Order to demolish all and other structures erected by Defendants and or their agents, assigns and grantees. (iii) Damages for trespass (iv) Perpetual Injunction restraining all defendants whether by themselves their agents, servants, workmen, operatives, hirelings , privies, purported grantors, person(s) or entities laying or tracing their interest or claim through them, from entering upon any portion of the subject 0’16 Acre of Plaintiff’s 0.20 Acre of land and further restrained from dealing with the said land and from carrying out any form of building construction and from putting up any act which would amount 2 |E1/68/2020 to disturbing Plaintiff’s continuous peaceful and quiet enjoyment of the subject matter land. (v) Costs,

including solicitors fee on full indemnity basis. The case of the Plaintiff in the Statement of Claim filed on the 29th of June, 2020 in which Plaintiff traces the antecedent of his claim he describes himself as a Civil Servant and the owner of the 0.20 acre parcel of land situate at Abekorpe, Dawhenya in the Greater Accra Region. Plaintiff avers in Paragraphs 2, 3, 4, 5 as follows;

Paragraph 2 By a deed of lease dated 17th day of October, 2012 made between Sky view Developers Ltd, as Assignor therein and the Plaintiffs herein as Assignee, the Plaintiff acquired the remainder of its Grantor's 99 years lease hold interest in all that 0.20 acre land situate at Dawhenya Abekorpe which parcel of land is particularly described in the schedule hereto.

Paragraph 3 Plaintiff says prior to the acquisition aforesaid he conducted a search and discovered that one Abraham Tetteh Kuttur Konortey who in the early 2000s was the head of family/ Asafoatse of the Ablewankor family, the original owners of the subject land and the said family's representative.

Paragraph 4 The said Abraham Tetteh Konortey become owner of approximately 110 acres of land by virtue of vesting Assent dated 15th August 2003 and granted same land to Alhaji Emmanuel Aryeh Ayiku per a Deed of transfer in March 2006 and the 3 | E1/68/2020 latter's interest thereof was duly registered at the lands commission.

Paragraph 5 By a deed of Assignment dated 23rd June 2009, Alhaji Emmanuel Aryeh Ayiku assigned the residue of his interest in approximately 30 acres of the said land situate at Dawohenya, Abekorpe of which the subject 0.20 acre land is party to Sky view Developers Limited as aforesaid in paragraph 2.

Paragraph 6 That Plaintiff says prior to the acquisition his enquires also confirmed that searches at the Lands Commission which confirmed that Alhaji Emmanuel Aryeh Ayiku had duly registered same at the Lands Commission before he sold it to Sky view Developers Limited. Upon acquisition of the land, Sky view Developers Limited surveyed the land and expended huge sums of money and demarcated the land into estate plots with well- planned layout scheme with bounded pillars and had been in possession since 2009 without any let or hindrance until in October 2012 when it assigned the 0.20 acre plot to Plaintiff. The Plaintiff then details the main dispute between him and the family in the following paragraph in their Statement of Claim.

Paragraphs 7, 8, 9, 10 and 11 which same will be reproduced for the sake of clarity.

Paragraph 7 4 | E1/68/2020 The Plaintiff says upon payment of full consideration for his land, which as at the time a bare land, he fixed his boundary pillars and took immediate possession by depositing two trips of sand and gravel chippings and 500 sandcrete block on the subject land and used a small fraction to erect four course sandcrete wall in all the four corners of the land to signal visible act of possession.

Paragraph 8 Sky view Developers Limited sold greater portions of its larger 30 acre land to other grantees but has maintained some portion. The Plaintiff has since 2012 been in possession of his land until sometime in 2019 when the 1st and 2nd Defendants violently trespassed his 0.20 acre land without his consent and at his blind side the Defendants have started constructing a building foundation on same using all his building materials on the land and ignoring the visible sign of Plaintiff's possession of the land.

Paragraph 9 The 2nd Defendant is claiming ownership of the subject land alleging the 1st Defendant who has carried and held himself as representing the Ablewankor Family sold the land to him. The 1st Defendant is purported to have sold albeit unlawfully Plaintiff's land and other land in the name of Ablewankor Family claiming to be the latter's agent or representative.

Paragraph 10 The Plaintiff obtained his grant from the selfsame Ablewankor Family through his grantor (Skyview

Developers Limited and therefore he is the lawful present owner wherefore the present and therefore the 1st Defendant and his Ablewankor family are estopped and barred from laying ownership 5 |E1/68/2020 claim to the self-same land and purporting to sell same to third parties including the 2nd and 3rd Defendant. Paragraph 11 The 3rd Defendant is the one constructing the building foundation on the subject land and when confronted, claiming the 2nd Defendant is the owner and has hired his services to carry on the building construction (which is at foundation level) with impunity on the subject land and has trespassed into Plaintiff's land and all attempts to stop the Defendants have proven futile as they use the services of land-guards to provide unlawful protection for them as they build albeit unlawfully. Plaintiff reiterated these facts in his Witness Statement and attached Exhibits to support his claim. I must state that, the 3rd Defendant's Kingsley Kwame, Asafoatse Tortime and Simon never entered appearance throughout the proceedings. All process emanating from this action were served on them through Substituted Service after personal service failed. They chose to ignore all the processes served on them through substitution by posting same on the walls of the disputed land and also on the notice Board of this Honourable Court. After the close of pleadings the following issues were identified and same issues were set down for trial ; (1) Whether or not Plaintiff is the owner of the 0.20 Acre piece of land located at Abe Korpe Dawhenya in the Dangbe west District. (2) Whether or not the Defendants have trespassed on Plaintiff's land. 6 |E1/68/2020 (3) Whether or not Plaintiff is entitled to the reliefs sought. Issue 1 Whether or not Plaintiff owns the disputed land: In his pleadings, Plaintiff contends that he purchased the disputed 0.20 acres of land from Sky view Developers Limited out of their 30 acre parcel of land. He tendered Exhibit A in Evidence which is a search at the Lands Commission dated 9th January, 2017 which revealed that the Enquirer is one Rebecca Abed and that the land in question is not a state land and transfer has been effected from Abraham Tetteh K. to Alhaji Emmanuel Ayiku on the 19th of March

2006. Attached to this is the site plan showing the disputed land with caption; Plan of land for Rebecca Abed Exhibit 'B' is an indenture dated 17th of October, 2012 entitled. Deed of Assignment between Skyview Developers Limited and Benjamin Andoh Exhibit 'C' are photograph of some development and construction of foundation wall on the said land which Plaintiff claims it is the Defendants who are embarking same. On the first issue as to whether Plaintiff is the owner of the disputed land, I will cite the case of Yarkwa Vrs Duah (1982) GBA 278 CA at page 281, where the learned Brobbey JA(as he then was) stated: "Firstly, this is a land case and therefore the Plaintiff/Respondent must succeed on the strength of her own case; Also in the case of Nartey Vrs Mechanical Lloyd Assembly Plant Limited (1987-88) 2 GLR 314 in which Adade JSC stated that persons who come to court no matter what the claim is, must be able to make good case for the Court to consider, otherwise he must fail; In the instant action, Defendants never entered appearance even though all the processes we served on them. 7 |E1/68/2020 Plaintiff however has filed all the necessary processes attached Exhibits; Exhibit A Search at the Lands Commission; Exhibit B and Indenture dated 17th October, 2012 between Skyview Developers Limited and Benjamin Andoh, Plaintiff herein. Exhibit C, Photographs showing construction of the foundation walls purportedly by the Defendants herein. Of course, Defendant never

entered appearance neither did they file any process disputing Plaintiff's claims. Even though all the processes were served on them through substituted service when personal service became impossible. This action, essentially an undefended cause, the rules of Court allows that Plaintiff mounts the Witness box and give his evidence thus on the 13th of January, 2023. Plaintiff gave his evidence-in-chief. None of the Defendants were in Court to cross-examine him. He relied on his Witness Statement filed on the 14th of January, 2023 and the exhibits attached as his evidence-in-chief in this trial. He was not challenged. On the issue of whether or not Plaintiff is the owner of the 0.20 acre piece of land located at Abe Korpe Dawhenya in Ga Dangbe West District, I will determine same by referring to the evidence adduced both oral and documentary. Exhibit A confirms that Skyview Developers, (Plaintiff's Grantor), indeed own the 30 acre land out of which 0.20 acre was sold to Plaintiff by the said company. The said Search report also revealed that the said 30-acre land belonged originally to the Ablewankor family, who granted a ninety-nine (99) years leasehold interest to Skyview developers who are Plaintiff's grantors. 8 |E1/68/2020 Plaintiff also tendered Exhibit B which is Deed of Assignment dated 17th October, 2012 executed in Plaintiff's favour by Skyview Developers (Plaintiff's Grantor). On the strength of the Principle in Fosua & Adu Poku vrs. Mensah 2009 SCGLR 301 which principle is that, a party who claims Declaration of title to land and recovery of possession bears the onus of proving his title on the preponderance of probability. Sections 11(1) and 12 (1&2) of the Evidence Act (NRCD 323) provides: Section 11(1) For the purpose of this act, the burden of producing evidence means the obligation of a party to introduce sufficient evidence to award a ruling on the issue against the party. Section 12(1) Proof by preponderance of probabilities.

- 1) "Except as otherwise provided by law the burden of persuasion require proof by a preponderance of the probabilities.
- 2) Preponderance of probabilities means that degree of certainty of believe 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 principle in the case of Nyikplorlpo vrs. Agbedotor (1987-88)1GLR 65 and also the case of Asante Appiah vrs. Amponsah (2009) SCGLR 90 which basically is that, a party who is claiming title to land is required to provide documentary evidence establishing his title. In the instant action, Plaintiff has in addition to his Witness Statement as evidence of his claim has also produced documentary evidence Exhibit A and B which documents I do not have any doubt of their authenticity, neither has Defendants challenged same. 9 |E1/68/2020 I am of the opinion that on Issue No. 1:, Whether or not Plaintiff is the owner of the 0.20 acre piece of land located at Abe Korpe, Dawhenya in the Dangbe West District, on the preponderance of probabilities, the Plaintiff per his evidence before this Court which was unchallenged by Defendants has proved that he is the owner of the said land in dispute. I hereby make a finding that indeed Plaintiff is the owner of the piece of land described as in relief (a) as; "All that piece of land situate, lying and being at Abe Korpe(Dawhenya) in the Dangbe West District in the Greater Accra Region of the Republic of Ghana and containing an approximate area of 0.20 Acre or 0.0 Hectare more or

less and bounded on the North –East by Assignor’s land measuring 111.8 feet more or less, on the South-East by proposed road measuring 79.2 feet more or less, on the South West by proposed road measuring 115.0 feet more or less; on the North–West by Assignor’s land measuring 80.0 feet more or less as same is more particularly delineated on the plan in favour of 1st Plaintiff”. On issue 2, that is whether or not Defendants have trespassed on Plaintiff’s land, Black’s Law Dictionary (Nineth Edition) defines Trespass as: “An unlawful act committed against the person or property of another especially wrongful entry on another’s real property” In the instant action, having made a finding that the Plaintiff by the evidence adduced and in accordance with law has proved that indeed he is the owner of the disputed land, any wrongful entry on the land by another person amounts to trespassing. 10 | E1/68/2020 The Defendants herein who never entered appearance to challenge this claim and by their act of entering the said land to erect the foundation wall have unequivocally trespassed unto Plaintiff’s land. On the issue 3, that is: Whether Plaintiff is entitled to his reliefs; having analyzed all the evidence adduced in respect of this action, it is my considered opinion that on the preponderance of probabilities, Plaintiff has established his case against the Defendants. Having made this finding, I will accordingly grant the reliefs sought by Plaintiff albeit with some modification;

- (1) Plaintiff is hereby declared title holder to the piece of land situate, lying and being at Korpe (Dawhenya) in the Dangbe West District in the Greater Accra Region of the Republic of Ghana and containing an approximate area of 0.20 Acre or 0.80 Hectare more or less and bounded on the North – East by Assignor’s land measuring 111’8 feet more or less on the South West by proposed road measuring 115.0 feet more or less on the North- West by Assignor’s land measuring 80.8 feet more or less. (2) Plaintiff is further granted leave to recover possession of the disputed land. I will however dismiss the relief for an order to demolish all and any structure erected by the Defendants and or their agents, assigns.
3. In respect of (relief 3), which Plaintiff is praying for damages for trespass, I do not find on record any evidence in that direction for the purpose of assessing damages. 11 |E1/68/2020 However, since Plaintiff has been able to establish trespassory conduct on the part of the Defendants, I am of the view that they are entitled to nominal damages of Two Thousand Ghana Cedis (GH¢2000.00) which I will award the Plaintiff against the Defendants.
- (4) In respect of relief (4), I hereby order that Defendants, their agents, servants, workmen, operators, hirelings, privies, assigns etc. are hereby restrained from having anything to do with the disputed land.
- (5) In respect of relief (5), It is my considered opinion that Plaintiff is entitled to cost and so I hereby award cost of Five Thousand Ghana Cedis (GH¢5,000.00) in favour of the Plaintiff and against the Defendants herein. (SGD) H/L: RITA AGYEMAN-BUDU (MRS.) JUSTICE OF THE HIGH COURT R.A.A. 12 |E1/68/2020

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