

GHANA / JUDGMENT

Christian Future Hope Ministry Vrs Effah (A1/33/20) [2023] GHACC 933 (25 January 2023) [2023] GHACC 933

COURT

Circuit Court

CASE / FILE NUMBER

A1/33/20

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IN THE CIRCUIT COURT HELD IN KUMASI ON WENESDAY THE 25TH DAY OF
JANUARY, 2023 BEFORE HER HONOUR PRISCILLA DAPAAH MIREKU (MRS.),
CIRCUIT COURT JUDGE.

SUIT NO. A1/33/20

CHRISTIAN FUTURE HOPE MINISTRY

VRS:

RICHARD AMPONSAH EFFAH @ WANGO

JUDGMENT

The Plaintiff on the 6th day of November, 2019 instituted an action against the defendant for the reliefs endorsed on the Writ of Summons;

- a. Declaration of title and recovery of Plot 6 Block XIV New Tafo, Kumasi.
- b. Perpetual injunction restraining the defendants, their agents servants, workmen, assigns, representatives and /or any person(s) claiming through them or on behalf of them or in any way dealing with and/or having anything to do with the land, the subject matter of the dispute.
- c. Damages and cost including legal fees.
- d. Any other order(s) as the justice of the case would require in terms of the rules of the Honourable Court. The defendant subsequently entered appearance and filed his statement of defence on 3rd December, 2019 and did not counterclaim for any relief. THE PLAINTIFF'S CASE; The summary of the Plaintiff's case is that, it is a Christian church registered under

the laws of Ghana located at New Tafo – Kumasi while the defendant lives in Kumasi. According to the Plaintiff, it acquired the subject matter from the Tafo Stool and was given an allocation note and site plan. The Plaintiff avers they had earlier acquired Plot No. 3, Block XIV and constructed their church building on same. That their grantor caused for the rezoning of the place sometime 2014/2015. That after the said rezoning the subject matter which was next to the plot behind their church became available and they were given the first option to purchase in addition to their Plot No.3. The Plaintiff alleges they were given an allocation note and site plan and subsequently a lease covering the subject matter. The plaintiff avers it took possession of the said plots but there were some mechanics that were put on the said plot by the defendant. That all attempts to evict the mechanics have been to no avail. The plaintiff says it wants the land for further development for their benefit of enjoying its property and prays for the aforementioned reliefs endorsed on the writ of summons. THE DEFENDANT'S CASE; According to the defendant he denies every allegation of fact contained in the Statement of Claim of the Plaintiff as if same were set out extensor and traversed seriatim. The defendant contends that the plaintiff has no capacity to sue as it is a body bereft of legal personality and that the name in which he had been sued is not his name and to that extent the writ is a nullity for want of a proper defendant. The defendant further alleges that his occupation of land which he uses for his business is a lawful one and has been open visible and undisturbed for twenty one (21) years and as such no person or entity is entitled to belatedly interfere with his peaceful and unhindered possession after 21 years. That, the alleged grantor of the plaintiff is not the owner of the land and cannot purport to grant same to the plaintiff or any person or entity. Thus, the plaintiff is not entitled to the reliefs endorsed on the writ of summons. ISSUES; The issues that were adopted and set down for trial were as follows;

1. Whether or not the Plaintiff church acquired Plot 6 Block XIV, New Tafo, Kumasi from the occupant of the Tafo Stool Nana Agyen Frimpong II
2. Whether or not the Plaintiff has a lease covering the said Plot No. 6, Block XIV, New Tafo, Kumasi.
3. Whether or not the Plaintiff is entitled to its claim.
4. Whether the Plaintiff has capacity to sue.
5. Whether the writ is a nullity for want of a proper defendant.
6. Whether the lawful occupation of the supposed defendant for 21 years has a definite legal effect.
7. Whether the alleged acquisition of the land by the Plaintiff is legal.
8. Any other issues raised by the Pleadings. In civil actions, the burden of proof is by the preponderance of probabilities and Section 12 of the Evidence Act 1975 (NRCD 323) provides that, (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. What constitutes proof in law? Proof is defined by the Dictionary of law, L. B. Curzon as “method by which the existence or non- existence of a fact is established to the satisfaction of the court” In RE WA NA; ISSAH BUKARI (SUBSTITUTED BY MAHAMA BUKARI & ANOR V. MAHAMA BYONG & OTHERS [2013-2014], the Supreme Court stated that, The Evidence Act, 1975 (NRCD 323), has prescribed the applicable procedure in every proceedings including inquiries, investigations and hearings, etc thus a person was obliged under section 11 of NRCD 323 to introduce sufficient evidence to avoid a ruling against him on an issue. It is important for the person who is making a claim denied by his opponent to lead sufficient evidence to prove his case by the preponderance of probabilities. In the case of ZAMBRAMA V. SEGBEZI [1991] 2 GLR 221 @ 246 the Court of Appeal held that, A person who makes an averment or assertion, which is denied by his opponent, has a burden to establish that his averment or assertion is true. And he does not discharge this burden from which the fact or facts he asserted can properly and safely be inferred. The nature of each averment or assertion determines the degree and nature of the burden. The first issue for consideration to be considered is whether the Plaintiff has capacity to institute this action because capacity is very paramount in all case and without capacity the case of the Plaintiff cannot stand. It is for this reason capacity can be raised at any time even on appeal. In the case of ASANTE-APPIAH V. AMPOSAH ALIAS MANSAH [2009] SCGLR 90, it was held that, “... where the capacity of a person is challenged, he has to establish it before his case can be considered on its merits”. This honourable court however takes judicial notice of the fact that the issue of capacity and nullity of the writ have already been dealt with by this honourable court when the defendant through his counsel raised preliminary legal objection before this honourable court and same was determine by the court on the 5th day of June, 2020. After same was determine by the court, the defendant appealed against the said ruling and on 24th June, 2021, the Court of Appeal by a unanimous decision dismissed the appeal of the defendant. Counsel for the Plaintiff contends that the Justices of the Court of Appeal made some recommendations which same have been complied. Thus, this court is of the view that, the issue of capacity of the plaintiff to institute this action has been dealt with and the plaintiff has capacity to sue the defendant. If counsel for the defendant had issues with the ruling of the Court of Appeal, he ought to appeal same at the Supreme Court rather than to reargue it in his address. The next issue to be considered is whether the writ is a nullity for want of a proper defendant. Per the defence of the defendant he contends that the name in which he had been sued is not his name and thus to that extent the writ is a nullity for want of a proper defendant. However in his evidence in chief, the defendant states “My name is Richard Effa Amponsah alias Wango.” The defendant per his statement alone admits he is Wango and thus cannot be said not to be Wango. The Plaintiff also led evidence that put the defendant on the subject matter. Thus this honourable court finds that, the defendant is the proper defendant for this suit. Counsel for the defendant in his address raise the issue of this court granting the plaintiff leave to amend the name of the defendant on the writ of summons as he alleges the said application was served in the absence of

counsel and also they were short served with the application and incapacitated from responding to same by reason of the absence of counsel. Counsel also argues that, as the court had fixed a date for judgment, it was incumbent upon the plaintiff to seek to arrest the judgment before filing any application. The proof of service affidavit of the said application to amend the writ indicates that service of the said application was served on the defendant's counsel on 12th December, 2022 while the application was moved on 14th December, 2022. Order 16 Rule 5(1)(a) of the High Civil Procedure Rules (C. I 47) provides that "Subject to Order 4 rules 5 and 6 and to the following provisions of this rule, the Court may at any stage of the proceedings upon an application by the plaintiff or any other party grant leave to the Plaintiff to amend the Plaintiff's writ." Thus, the question to ask is at the time the plaintiff made the instant application, had proceedings ended? As to whether the plaintiff ought to have arrested the judgment before he could file the aforementioned application when time for addresses has not ended, I am of a different opinion but it is clear that the defendant was short served and the court ought not to have heard the instant application on the said date. However, the rules encourage the court to apply the rules in such a way to avoid unnecessary delay and expenses. The said amendment was for the amendment of the defendant's name. The defendant admitted under examination in chief that he is Richard Effah Amponsah alias Wango. The setting aside of this order of this court will not change the fact that Richard Effah Amponsah is the same as Wango as discussed supra. With the issues of capacity and the issue of whether the defendant was a proper person to sue dealt with, it is now time to go into the substantive issues before this honourable court. The Plaintiff alleges that it acquired the subject matter from the Tafo Stool and same has been denied by the defendant. The defendant further denies the alleged grantor ability to grant same to the plaintiff as he alleges that, the said plot of land is the property of Kumasi Metropolitan Assembly. This case before this honourable court is a land dispute and in the case of *AWUKU V. TETTEH*, [2011] 1 SCGLR 366 the court held that, "In an action for declaration of title to land, the onus was heavily on the Plaintiff to prove his case; he could not rely on the weakness of the defendant's case. He must, indeed, show clear title." In the case of *MONDIAL VENEER (GH) LTD V. AMUAH GYEBY XV* [2011] 1 SCGLR 466, it was held that, there is the "need for person having burden of persuasion to prove root of title, mode of acquisition and acts of possession exercised over disputed property." Also in *ARYEH & AKAKPO V. AYAA IDDRISU* [2010] SCGLR 891, the court was of the view that, "to succeed in an action for declaration of title to land, injunction and recovery of possession the plaintiff must establish by positive evidence the identity and limits of the land claimed." The Plaintiff in proving its case called two witnesses, Alexander Addo (PW1) and Nana Agyen Frimpong Derkyi (PW2). The plaintiff alleges they acquired the subject matter from the Tafo stool and called PW2 the administrator of the Tafo Stool Lands Secretariat to testify same. PW2 testified that the land was indeed Tafo Stool Lands and the plaintiff is a rightful owner of same. Both witnesses testified that indeed the place was initially a refuse dump and was cleared around 2013. The Plaintiff did not tender any documentary proof as the witness statement of John Kofi Kumah whose witness statement PW2 sought to tender in evidence as hearsay evidence was rejected by this Court. In the case of *ARYEE V. SHELL GHANA LTD &*

FRAGA OIL LTD (supra), the Supreme Court held that, “the court could rely on the evidence of a single witness in proof of the point in issue provided the witness was credible and had knowledge of the subject matter. Therefore, even the failure by a party himself to give evidence could not be used against him by the court in assessing his case.” Counsel for the defendant argues in his address that the witnesses of the Plaintiff do not have knowledge of the subject matter and the court cannot rely on their evidence. This court disagrees with counsel and finds both PW1 and PW2 as credible witnesses. This court accepts PW2’s evidence that the land is a Tafo Stool Land and same has been allocated to the plaintiff. with the land being used as a refuse dam alleged by PW2 and not too long ago being cleared, I take judicial notice of same as I was raised at Tafo Nyiaeso or New Tafo and this refuse damp was notoriously known by all in the said vicinity. The evidential burden shifted to the defendant when the plaintiff evidence before the court makes it probable that the subject matter belongs to the Tafo Stool and same granted to the plaintiff. The defendant tendered pictures (Exhibits “2” and “2A”) of a notice and bill board allegedly placed on the land by KMA proving that the land belongs to KMA. This court cannot rely on these exhibits as there is no evidence before the court that shows that the said notice or bill board was indeed on the subject matter and the said notice is also not proof of ownership. The defendant through his defence alleges that the subject matter belongs to KMA and was going to subpoenaed them to come testify but he abandoned the said subpoena the last minute. This is Honourable court finds on the preponderance of probabilities that the subject matter is a stool land and the Tafo Stool had the capacity to grant same to the Plaintiff. The Defendant argues that he has been on the land for 21 years and thus it has a definite legal effect. This assertion of the defendant has been denied by the plaintiff. At the time the Defendant was filing his defence it was 2019 thus 21 years will mean that the defendant is alleging he has been in possession of the subject matter since 1998. If same is true that he has been in possession for 21 years, then defendant will be protected by the courts against all except anybody with better title. In the case of KLU V. KONADU APRAKU [2009] SCGLR 741, it was held that “the combination of the extinguishing of the original owner’s right under s. 10(6) of the Limitation Decree 1972, with the barring of action against the adverse possessor being construed to have gained a right that is enforceable by action” Counsel for the defendant also cite the case of ABAKA EFFIANA FAMILY & ORS V. MBIBADO EFFIANA FAMILY & ORS [1959] GLR 362 ,where it was held that, where a defendant has been in long undisturbed possession and occupation of land, he is entitled to the protection of the law against all who cannot affirmatively prove a better title. The Honourable Court agrees with this position of the law. A party stating that he has been in possession of a subject matter for a long time is not enough, he must show adverse possession by leading of credible evidence. Parties going into the witness box to repeat their pleadings are not ideal. If that is all that is required from parties, then there will be no need to call witness to testify in the witness box. The defendant tendered a site plan allegedly for KMA but the said plan has Plot No. 02 endorsed on same and the locality is New Tafo. This description on Exhibit “4” is different from the subject matter and no evidence has been led to show that Plot No. 6 XIV is same as Plot No. 02. Also, Exhibit “4” is also not endorsed by any Regional Surveyor or stamped. Section 10 of

the Evidence Decree NRCD 323 provides that,

- (1) For the purposes of this Decree, 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 to raise a reasonable doubt concerning the existence or non-existence of a fact or that he establish the existence or non-existence of a fact by a preponderance of the probabilities or by proof beyond a reasonable doubt. At the end of this case, this honourable enters judgment for the Plaintiff per the reliefs endorsed on the writ of summons;
 - a. Declaration of title and recovery of Plot 6 Block XIV New Tafo, Kumasi.
 - b. Perpetual injunction restraining the defendants, their agents servants, workmen, assigns, representatives and /or any person(s) claiming through them or on behalf of them or in any way dealing with and/or having anything to do with the land, the subject matter of the dispute.
 - c. Damages and cost including legal fees.
 - d. Any other order(s) as the justice of the case would require in terms of the rules of the Honourable Court. This Court declares title in favour of the plaintiff, perpetual injunction is hereby granted against the defendant in favour of the plaintiff. Damages of ten thousand Ghana Cedis is awarded against the defendant and cost of five thousand is awarded against the defendant. H/H PRISCILLA DAPAAH MIREKU (MRS.) SGD. CIRCUIT COURT 2, ADUM 25TH JANUARY, 2023 11

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