

GHANA / JUDGMENT

Awuku Vrs Kofi Ii and Another [2023]

GHADC 186 (28 February 2023)

COURT
ghadcDECIDED
28 February 2023

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IN THE DISTRICT MAGISTRATE COURT HELD AT NSAWAM N.A.M.A. ON 28TH FEBRUARY, 2023
BEFORE HER WORSHIP SARAH NYARKOA MAGISTRATE SUIT NO. A1/27/19 CHARLES K.
AWUKU OF NEW DJANKROM-NSAWAM ----- PLAINTIFF VRS ----- DEFENDANTS

1. NANA OSAE KOFI II OF FOTOB
2. FOSTER AGBODZA OF WAGARA-NSAWAM PARTIES: PRESENT. DEFENDANT ABSENT.
COUNSEL: BARIMA NTIAMOAH HOLDING BRIEF FOR FRANCIS OSEI- BONSU FOR
DEFENDANTS PRESENT.

JUDGMENT

The Plaintiff claims against the defendants as follows:

- a. Plaintiff claim against the Defendants is for declaration of title, right of ownership and recovery of possession of two and half(2 ½) plot of land more or less at a place commonly known and called Oparekrom near Avaga- Nsawam which shares one common boundary on one side by the property of Oppong, on one side of the property of vendor, the late Thomas Addo Gyan, on one side proposed road and by the other side a street.
- b. An order for interlocutory injunction to restrain the Defendants.
- c. GH¢1,000.00 being special damage cause to Plaintiff by the Defendants by destroying the torch foundation and blocks.
- d. Cost Page 1 of 8 1st Defendant counter claimed for the following reliefs:
 - a. Declaration of title to the 11.20acre land lying and being at Djankrom near Nsawam and bounded on the North- East by the landlord's property and measuring on that side a total distance of 1250 feet more or less; on the South East by the landlord's property measuring on that side a distance of 220 feet more or less; on the South West 1007 feet more or less and on the North West by the Landlord's property and measuring a distance of 680 feet more or less.
 - b. Recovery of possession.

- c. Damages for trespass.
 - d. Perpetual Injunction restraining the Plaintiff his family members, his agents, assigns, workmen etc. to have anything doing on the land in dispute. PLAINTIFF'S CASE According to the Plaintiff, somewhere in the year 2000, the late Thomas Addo Djan of the Aduana Abrade Family engaged his services to plot land for him for which the Plaintiff was compensated in kind with two and half plots of land and a deed of gift was duly executed. The Plaintiff continued that, sometime in 2018, the 1st Defendant claimed ownership of the land and further instructed the 2nd Defendant to destroy the Plaintiff's blocks and filled trenches Plaintiff had dug. The Plaintiff concluded that, he never came by the land by way of fraud and prays the Honorable Court to come to his aid and stop Defendants from taking his land. Plaintiff closed his case without calling any witness. 1st DEFENDANT'S CASE Page 2 of 8 The 1ST Defendant, who is the chief of Fotobi, stated that, the piece of land the Plaintiff is laying claim to belongs to his family. 1st Defendant again stated that, the said land is part of a bigger parcel of land and covering about 69.32 acres which belongs to his family. The 1st Defendant added that, the document purported to have been executed by Thomas Addo Djan is forged because, his relative, Thomas Addo Djan died in 1952 and could not have been alive to execute the document. The 1st Defendant continued that, around the year 2000, the head of family was the late Owuraku Newton who died in 2004 and was succeeded by the late Kojo Lamptey who was head of family till
2014. 1st Defendant averred that, no land has been alienated to the Plaintiff at all by family and that he has neither caused damage nor instructed anyone to cause damage to Plaintiff's blocks. 1st Defendant closed his case without calling any witness. 2ND DEFENDANT'S CASE 2nd Defendant asserted that, the Plaintiff is laying a false claim to the four plots of land which belongs to the 1st Defendant's family 2nd Defendant added that, the Plaintiff has no blocks on the said land and so the 2nd Defendant could not have destroyed any blocks belonging to the Plaintiff. 2nd Defendant closed their case thereafter. The legal issues to be determined by this Court are:
- i. Whether or not the Plaintiff is entitled to a declaration of title to the land per his claim." ii. Whether or not the 1st Defendant is entitled to a declaration of title to the land per his counterclaim iii. Whether or not the Plaintiff is entitled to damages Page 3 of 8 Before proceeding to determine the issues raised supra the Court takes note of the fact that, Plaintiff's Exhibit "A" which is a Deed of Gift is neither registered nor stamped. Section 20 (1) of the Stamp Duty Act 2005, Act 689 provides as follows: "(1) A conveyance or transfer operating as a voluntary disposition inter vivos shall be chargeable with stamp duty as if it were a conveyance or transfer on sale, with the substitution in each of the value of the property conveyed or transferred, for the amount or value of the consideration for the value." The general rule is that, a document requiring stamping is inadmissible if it is not stamped in accordance with the applicable law. Section 32(1) and (6) of the Stamp Duty Act 2005, Act 689 provides as follows: "(1) where an instrument chargeable with a duty is produced as evidence

- (a) In a Court in a civil matter, or
- (b) Before an arbitration or referee, The judge, arbitrator or referee, shall take notice of an omission or insufficiency of the stamp on the instrument.
- (6) Except as expressly provided in this section, an instrument
- (a) Executed in Ghana, or
- (b) executed outside Ghana but relating to property situate or to any matter or thing done or to be done in Ghana, shall except in criminal proceedings, not be given in evidence or be available for any purpose unless it is stamped in accordance with the law in force at the time when it was first executed.” In the case of *Mansah and Ano. V. Asamoah* [1975] 1GLR 225, CA, the Court had this to say: Page 4 of 8 “The defendant relied on the deed of gift executed in his favour in 1960. When this document was tendered in the district Court objection was raised by learned counsel for the plaintiffs but the objection was overruled on the flimsy ground in the following words, "Objection overruled as grantor will soon appear." How did the trial magistrate know that the grantor will soon appear? It should have occurred to the district Court that by virtue of section 14 (5) of the Stamp Act, 1965 (Act 311), as amended by the Stamp Act, 1965 (Amendment) Decree, 1967 (N.L.C.D. 160): "Save as expressly provided in this section any instrument executed in any part of Ghana or relating, wheresoever executed, to any property situate, or to any matter or thing done or to be done, in any part of Ghana, shall not, except in criminal proceedings, be given in evidence, or be valuable for any purpose whatever, unless it is duly stamped in accordance with the law in force at the time when it was first executed, in the proportion to which the value of the property situate in Ghana stands, with that of the whole of the property covered by the instrument.” The words of the section are unambiguous—the document shall not be given in evidence or be available for any purpose whatever. It follows that exhibit I should not have been admitted in evidence at all” It is true in the present case that, Exhibit “A” was tendered and admitted without any objection although it ought not to have been admitted at all. The admission of such evidence can even be set aside even on appeal. In the present case, this Court shall not rely on Exhibit “A”. Section 8 of Evidence Act, NRCD 323, provides as follows: “Evidence that would be inadmissible if objected to by a party may be excluded by the Court on its own motion.” In tandem with Section 8 of NRCD 323 the Court hereby excludes Exhibit “A”. Page 5 of 8 I must add that, Exhibit “A” is also unregistered and so even if it had not been excluded by the Court, it would yet still have no legal effect under Act 122; which was the applicable law at the time the writ was issued. Section 24 of the Lands Registry Act, 1962(Act 122) provides that: “Subject to subsection (2), an instrument, other than a will or a judge’s certificate, first executed after the commencement of this Act, shall not have effect until it is registered.” At present the Plaintiff’s Exhibit “A” is unregistered and so it shall have no legal effect until it is registered. Similarly, 1st Defendant’s Exhibit “1” is also unregistered and it shall accordingly suffer the same fate as Exhibit “A” under the applicable Act. Having determined that, both Plaintiff’s Exhibit “A” and 1st Defendant’s Exhibit “1” have no legal effect for purposes of this judgment, the Court shall proceed to examine the rest of the

evidence to resolve the issues raised. Having excluded Exhibit “A”, it seems the Plaintiff failed to describe his land in what remained of his evidence. Even though Plaintiff has described his land in some form by his Writ of Summons, he ought to have led evidence on same. At the end of the day, it is the evidence on record that is evaluated by the Court and not the pleadings. It is trite learning that, where a party fails to lead evidence on an issue raised in his pleadings that party is deemed to have abandoned that particular issue. Plaintiff failed to prove the boundaries of the land in dispute per his evidence. In the case of *Ababio V Akwasi IV* [1994-1995] GBR 774, Aikins JSC delivered himself thus; Page 6 of 8 “The general principle of law is that it is the duty of a plaintiff to prove what he alleges. In other words, it is the party who raises in his pleadings an issue essential to the success of his case who assumes the burden of proving it. The burden only shifts to the defence to lead sufficient evidence to tip the scales in his favour when on a particular issue, the plaintiff leads some evidence to prove his claim. If the defendant succeeds in doing this, he wins if not he loses on that particular issue.” Theodore Agyei Osae & Ors. Vrs. Numo Nortey Adjeifio and Others (2007-08) SC GLR 499, the Court held that: “The burden of proof and persuasion remained on the appellants to prove conclusively, on a balance of probabilities, the boundaries of the Land to which they claimed a declaration of title and perpetual injunction. This burden hardly shifts...to successfully maintain an action for a declaration of title to land, the appellants had to prove with certainty the boundaries of the land claimed”. Considering the importance the law places on the proof of boundaries, it becomes fatal for any Plaintiff who fails to describe his land in his evidence. In *Nyikplorkpo v. Agbodotor* [1987-88] 1 GLR 165, the Court of Appeal per holding 3 stated that: “To succeed in an action for declaration of title to land, recovery of possession and for an injunction the plaintiff must establish by positive evidence the identity and the limits of the land which he claimed”. Also, in the case of *Anane v. Donkor* [1965] GLR 188 @ 192, the Supreme Court held that: Page 7 of 8 “A claim for declaration of title or an order for injunction must always fail, if the plaintiff fails to establish positively the identity of the land claimed with the land the subject-matter of his suit. On the evidence, the plaintiff and co-plaintiff had failed to prove the identity of the farms the subject-matter of their mortgage with the farms the subject matter of the present suits.” As laid down by the cases cited supra, a party cannot succeed in an action for declaration of title to land where that party fails to lead evidence on the boundaries of the land. In pursuance of same, the Plaintiff in the present Suit must fail. For the foregoing reasons, I need not go into the merit of Plaintiff’s case. I hereby dismiss Plaintiff’s claim for declaration of title. Having done so it only follows that, Plaintiff’s claim for damages is rendered moot thereby. I accordingly dismiss Plaintiff’s claim for damages as well. A perusal of what remains of 1st Defendant’s evidence shows that, he also failed to adequately show the boundaries of his land sans Exhibit “1”, which the Court is paying no attention to at present for being unregistered. Had the 1st Defendant proved his boundaries by the rest of his evidence; that is by his Witness Statement, same would have been considered by the Court. As it is, the same fate befalls the 1st Defendant in accordance with law for failing to establish his boundaries in what remains of his evidence. In view of same 1st Defendant’s counter claim must also fail. In view of the foregoing, I hereby dismiss both

the Plaintiff's claim and the 1st Defendant's counter claim. There shall be no order as to cost.

..... H/W SARAH NYARKOA NKANSAH MAGISTRATE

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