

GHANA / JUDGMENT

KOKO VRS. DODOO (E1/AHC/83/21)

[2025] GHAHC 35 (20 February 2025)

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COURT
High Court

CASE / FILE NUMBER
E1/AHC/83/21

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IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT OF JUSTICE AMASAMAN, ACCRA, HELD ON THURSDAY THE 20TH DAY OF FEBRUARY, 2025 BEFORE HER LADYSHIP JUSTICE PRISCILLA DAPAAH MIREKU (MRS.) SUIT NO. E1/AHC/83/21 EMMANUEL KOKO ... PLAINTIFF VRS NII DODOO ... DEFENDANT

JUDGMENT

The Plaintiff is a resident at Abeka-Accra and has instituted this action against the Defendant for;

- a) Declaration of title to the land described in the schedule. ALL THAT PIECE OF LAND situate lying and being at Bukuase Afiaman-Accra containing an approximate area of 0.16 acre, more or less and bounded on the North-West by lessors' land measuring 100 feet more or less and bounded on North-East by Lessor's land measuring 70 feet more or less on the South-East by Suit No. E1/83/21: Emmanuel Koko vs Nii Dodoo Page 1 of 10 Lessors' land measuring 100 feet more or less and on the South-West by proposed road measuring 100 feet more or less which said piece of land is more particularly delineated on the plan attached hereto and thereon shewn edged pink.
- b) Recovery of Possession of the land in dispute.
- c) General damages for trespass.
- d) Perpetual injunction restraining the Defendant, his agent(s) or any person(s) claiming through him from entering or causing anything to be brought on the land or building on the land in dispute pending the final determination of this suit.
- e) Costs including legal cost. The summary of the Plaintiff's case is that, sometime in 1997, the Defendant's father Enoch Lamptey Dodoo and William Dodoo Ankrah acting as joint heads and lawful representatives of the Dodoo family of Afiaman leased the disputed land to him for a term of ninety-nine (99) years. That he has been exercising ownership of the land and entered possession of the land since its acquisition. That upon the demise of the Defendant's father, the Defendant has entered portion of the subject matter in dispute and developing

same. That the Defendant will not stop to his trespass on the land unless this Court restrain him. That he reported the Defendant to the Pokuase police but the Defendant did not cooperate with them. Thus, he instituted this action against the Defendant on the 1st day of December, 2021 for all the reliefs endorsed on his Writ of Summons aforementioned. The summary of the Defendant's case is that he knows the Plaintiff through the Full Gospel Business Men's Fellowship International platform. That when the Plaintiff reported him to Suit No. E1/83/21: Emmanuel Koko vs Nii Dodoo Page 2 of 10 the police station, he was asked to identify his supposed land but could neither tell the size, physically identify the land on the ground or show any proof that he purchased any land from his late father. The Defendant further avers that since the passing of his father, he has personally approached persons on the land in whatever shape or form either personally or through writing by his lawyers to ascertain their interest. That the Plaintiff has never been known as having purchased any land nor had any acts evidencing ownership of any portion of the land. Thus, the Plaintiff is not entitled to the claims put forth in his Statement of Claim. Per the Plaintiff's Reply to the Statement of Defence, he avers that the Defendant never approached him in respect of the subject matter in dispute but rather he approached him to stop trespassing on his land. That he first acquired the land in dispute from the Defendant's uncle in 1997 thereabout but the indenture was not prepared because the uncle was not available so in 2003, he approached the Defendant's father for the documents who took another money from him before executing the document for him. Thus, the indenture was prepared and signed by the Defendant's father and uncle. That he did produce the said document at the police station. That he submitted the document for registration at Lands Commission but there was an issue with the site plan so a new barcoded site plan was prepared for him. The issues that were adopted and set down for trial were as follows;

- i. Whether or not the Plaintiff is the owner of the land in dispute? ii. Whether or not the Plaintiff was in possession of the land when the Defendant trespassed? iii. Whether or not the land in dispute is the land given to the Plaintiff by his lessors? Suit No. E1/83/21: Emmanuel Koko vs Nii Dodoo Page 3 of 10 iv. Whether or not the Plaintiff acquired his land from Enoch Lamptey Dodoo and William Dodoo Ankrah who were both the Defendant's uncle and father respectively.
- v. Whether or not the Plaintiff has document covering the land? vi. Any other issues arising out of the pleadings? The Plaintiff in proving his case testified on his own behalf and called one Benjamin Lamptey to also testify on his behalf. 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." Section 10(1) of the Evidence Act 1975 (NRCD 323) provides that, "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.” According to Section 11(4) of the Evidence Act 1975, (NRCD 323), “... 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”. Suit No. E1/83/21: Emmanuel Koko vs Nii Dodoo Page 4 of 10 The Plaintiff alleges to have acquired the subject matter in dispute from the Defendant’s late father and uncle which same has been denied by the Defendant. Thus, the onus is on the Plaintiff to prove his case by the preponderance of probabilities. In the case of *Zambrama v. Segbezi* [1991] 2 GLR 221 @ 246, it was 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.” Also, in *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.” The Plaintiff in proving his case tendered Exhibit ‘A’ which a receipt for part payment for two (2) plots of land dated 10th May, 1997 signed by one E. L. Dodoo and another receipt dated 4th October, 1997 being part payment for one (1) plot of land allegedly signed by the same E. L. Dodoo. During cross-examination, Counsel put it to the Plaintiff that he did not know the land if it existed as the receipts speak of two (2) different plots of land. The Plaintiff explained that, he was initially buying two (2) plots but one (1) was taken away from him so he purchased only one (1) plot. Suit No. E1/83/21: Emmanuel Koko vs Nii Dodoo Page 5 of 10 The size of the land endorsed on the receipts are not same as what is endorsed on Exhibit ‘B’ the indenture allegedly issued to him by the Defendant’s father and uncle. Per Exhibit ‘B’, the size of the land in dispute is 100 by 70 feet. Exhibit ‘B’ was also allegedly executed in 2003 and allegedly signed by both the Defendant’s father and uncle. Under cross-examination, the Plaintiff admitted that in 2003, the Defendant’s uncle who allegedly signed the indenture (Exhibit ‘B’) was deceased. Also, the signatures on Exhibit ‘A’ and Exhibit ‘B’ allegedly authored by E. L. Dodoo are clearly two (2) different signatures. The Plaintiff’s explanation is that when he purchased the land from E. L. Dodoo in 1997, he was not issued with the document and because he was not available that is why he dealt with the Defendant’s father William Dodoo. That he believes in the integrity of the Dodoo family that is why he dealt with them. The Plaintiff further testified that he proceeded to get a building permit in 2004 when he was given the indenture and same was granted. that he proceeded to register the land but there was an issue with the site plan and he was informed that, Lands Commission no more uses the old site plan that is why he acquired a new site plan and that site plan is dated 13th January, 2022. The plaintiff however did not tender the old sit plan. The Defendant denies that Exhibit ‘B’ was issued by his late father and uncle. According to the Defendant, the signatures on Exhibit ‘B’ cannot originate from his father and uncle and tendered Exhibit ‘3’, a statutory declaration allegedly signed by them. A careful perusal shows that the signature of E. L Dodoo on Exhibits ‘3’ and ‘4’ are same or as the signatures on the receipts issued to the Plaintiff and the signature of William Dodoo Ankrah is the same or similar to the one

endorsed on Exhibit 'B'. The Plaintiff called one Benedict Lamptey (PW1) to testify. PW1 testified that, he introduced the Plaintiff to the Defendant's family and that he was present when the Plaintiff acquired the subject matter in dispute from the Defendant's family. Suit No. E1/83/21: Emmanuel Koko vs Nii Dodoo Page 6 of 10 The Defendant alleges that, he has known the Plaintiff since 2001 through Full Gospel Businessmen Fellowship International and the Plaintiff never informed him that his father had sold land to him or owned the subject matter in dispute till he reported him to the police. That there is no record of the Plaintiff having purchased land from his family. The Defendant did not tender any list or record to the Court that has records of people their family has sold land to. This Court finds as fact that Exhibit 'B' was not signed by the late E. L. Dodoo as he was deceased when same was issued. The signatures on Exhibit 'A' are signed by the same person with the name E. L. Dodoo. The Plaintiff's explanation that he paid for the land in installment has also been corroborated by PW1. Under cross-examination, PW1 admitted he could not see the signatures of the Plaintiff's father and uncle but insisted that he took the Plaintiff to the Defendant's uncle and father. PW1 seems to know so much about the Defendant's family land that, he testified under cross-examination that, he was the one who even showed the Defendant the boundaries of his father's land as he was the first person to have acquired a land from him. The Court finds with regard to Issues 4 and 5 that, on the principle of preponderance of probabilities, the Defendant's family did sell land to the Plaintiff in 1997 but they failed to issue documentation for him. However, Exhibit 'B' was not executed by the Defendant's father and his uncle as his own witness (PW1) admits that he cannot identify their signatures on same. The Plaintiff alleges that he immediately went into possession of the subject matter until the Defendant trespassed on same and same has been denied by the Defendant. In the case of *Majoladge v. Larbi* [1959] GLR 190, it was held that; When a Party makes an averment in his pleading which is capable of proof in a positive way and the averment is denied, that averment cannot be sufficiently proved by just mounting the witness box and reciting the averment on oath without adducing some corroborative evidence. The Plaintiff did not tender a single evidence to show as proof that indeed he was in possession of the subject matter when the Defendant allegedly trespassed on same. Also, with the identity of the land, the land as described by the Plaintiff does not go with the land as described by his receipts. As aforementioned, the Court believes that Plaintiff's claim that he acquired a plot of land from the Defendant's family but he has failed to prove to this Court the identity of the land he acquired from the Defendant's family. The receipts tendered also shows that part payment was made by the Plaintiff to the Defendant's family and there is no receipt which shows that full payment has been made for the purchase of the subject matter. 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 the case of *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." Suit No. E1/83/21:

Emmanuel Koko vs Nii Dodoo Page 8 of 10 The Plaintiff only proved acquiring a plot of land from the Defendant's family but failed to prove the identity of the land, acts of possession exercised over the disputed land and clear boundaries of the subject matter. Thus, the Plaintiff failed to prove his case by the preponderance of probabilities and thus, fails in all his claim against the Defendant. Judgment is therefore entered against the Plaintiff. Costs of Ten Thousand Ghana Cedis (GH¢10,000.00) is awarded against the Plaintiff. (SGD)
PRISCILLA DAPAAH MIREKU J. (MRS.) JUSTICE OF THE HIGH COURT

- Present
- Present PARTIES Plaintiff Defendant COUNSEL
- 1. EDMUND OPPONG NANA EFFAH HOLDING BRIEF OF THOMAS HUGHES FOR THE PLAINTIFF
- ABSENT
- 2. DEREK YEBOAH GYAMFI FOR THE DEFENDANT
- ABSENT Suit No. E1/83/21: Emmanuel Koko vs Nii Dodoo Page 9 of 10 CASE REFERRED TO:
 - 1. Zambrama v. Segbezi [1991] 2 GLR 221 @ 246
 - 2. Awuku v. Tetteh [2011] 1 SCGLR 366
 - 3. Majoladge v. Larbi [1959] GLR 190
 - 4. Mondial Veneer (GH) Ltd v. Amuah Gyeby XV [2011] 1 SCGLR 466
 - 5. Aryeh & Akakpo V. Ayaa Iddrisu [2010] SCGLR 891 ACTS
- 1. Section 12 of the Evidence Act 1975 (NRCD 323)
- 2. Section 10(1) of the Evidence Act 1975 (NRCD 323)
- 3. Section 11(4) of the Evidence Act 1975, (NRCD 323) Suit No. E1/83/21: Emmanuel Koko vs Nii Dodoo Page 10 of 10

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