

GHANA / JUDGMENT

AMPOMAH VRS OPPONG (A1/07/2023) [2024] GHADC 329 (22 July 2024)

COURT
ghadcDECIDED
22 July 2024

Source: ghalii.org · Research copy typeset by Esheria. Not court-issued or certified.

Source record

IN THE DISTRICT COURT HELD AT AGOGO ON THE 22/07/2024 BEFORE HIS
WORSHIP, CYNTHIA BLOAGOGEE DISTRICT MAGISTRATE
SUIT NO. A1/07/2023

IN THE MATTER OF:

1. ERIC AMPOMAH
2. ROBERT OTENG
1. KWESI OPPONG
2. DORA AMPOMAH

PARTIES UNREPRESENTED
PLAINTIFFS
VRS
DEFENDANTS

JUDGMENT

The 1st plaintiff herein mounted the instant suit against the 1st Defendant for the following relief,

1. Declaration of title to the entire plot number 110, block 2 and a four bedroom boys quarters on a portion of the said plot situate at a place called Bontodease near the Presbyterian Church in the Ashanti Akim Municipality.
2. Perpetual injunction restraining the defendants, their agents, assigns, customary successors representatives and any other person claiming title through them. The parties later applied for joinder and the 2nd plaintiff and defendant were joined to the suit. PLAINTIFFS CASE: 1 The 2nd plaintiff opted to testify for and on behalf of the 1st plaintiff. It is the 2nd plaintiff's case that the 1st plaintiff is his biological son whom he begot with the late Agnes Benewaa. According to the 2nd plaintiff he personally purchased the disputed plot in the year 1983 for his late wife Benewaa. He added that after the demised of Benewaa in the year 1987, her sister by name Adwoa Kwankyewaa succeeded her, thus, she held the subject land in trust of the 1st plaintiff who was a minor at the time. He said when the 1st plaintiff attained full age Kwankyewaa handed the plot documents to him. He tendered in evidence a copy of the

Grant of plot for Building and a site plan without objection. Same marked as exhibits A and B respectively. The 2nd plaintiff was quick to add that during the life time of Benewaa, she built three bedrooms on a portion of the disputed land of which the 1st plaintiff had been in quiet occupation since then. Furthermore, it is the 2nd plaintiff's case that the adjoining vacant land which forms part of the disputed subject land had been cultivated by the 1st plaintiff and beneficial owner. He said the 1st plaintiff is entitled to his claims. The plaintiffs witnesses confirmed their case. THE DEFENDANTS CASE: The 1st defendant and attorney for the 2nd defendant intimated to the court that the land in dispute was acquired by the 2nd defendant in the year 1984. It is the 1st defendant's case that the 2nd defendant acquired the two plots of land and provided their numbers as 137 and 164 block P. He was quick to add that plot 164 is cultivated with plantain whereas number 137 is a refuse dump. 2 Beyond that, the 1st defendant averred that at the time of the purchase of the subject land, a buyer was not allowed to purchase more than a plot. Thus, he added that the 2nd defendant bought plot 137 in her own name and 164 in the name of one Obeng Amanfo, who is a brother to the 2nd Defendant. Besides it is the 1st defendant's case that prior to the rezoning of the area by the stool, the plot numbers 137 and 164 block P were numbered 34 and 35 block C. he tendered in evidence the following documents in support of his case. The power of attorney and same marked as exhibit 1 without objection. A series of receipts in the name of Dora Amanfo, same admitted and marked as exhibits 2 series. Then the Grant of plot for building for plot 137 block P as exhibit 3. Site plan of plot 137 as exhibit 4. In addition is another series of receipts also bearing the name of Dora Amanfo marked as exhibit 5 series? Then a Grant of plot for building of plot 164A Block P in the name of Kennedy Kwasi Obour Boamah, same marked as exhibit 6 with a site plan marked as exhibit 7 and lastly a series of receipts in the name of Kennedy Kwesi Obour Boamah, marked as exhibit 8 series. Furtherance to that, the 1st defendant averred that the 2nd defendant made him a caretaker over the land since she was predominantly domiciled in Accra. ISSUE: Whether or not the plaintiff has a better title in plot number 110 block 2 than the defendant. THE LAW AND ANALYSIS: In a civil matter such as this one, the plaintiff has a duty to persuade the court that he has core evidence to meet the legal standard as provided in sections 10,11 and 12 of the EVIDENCE ACT, 1975 (NRCD 323) section 10 (1) and (2) 3 "For the purpose of this Decree, the burden of persuasion means the obligation of a party to establish a requisit 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." The above provision is stressed in BAKERS-WOODE VRS NANA FITZ [2007-2008] 2 SC GLR 879. "Since the defendant claimed that the admitted oral contract between himself and the plaintiff had been rescinded by mutual agreement, the persuasive burden clearly was on him to prove that assertion, ...The common law has always followed the common sense approach that the burden of persuasion of proving all facts essential to any claim lies on whoever is making the claim." Section 11(1) and (4) "For the purpose of this Decree, the

burden of producing evidence means the obligation of a party to introduce sufficient evidence to avoid a ruling against him on the issue.”

- (4) In other circumstances the burden of producing evidence requires a party to produce sufficient evidence so that on all the evidence a reasonable mind could concluded that the existence of the fact was more probable than its non-existence. See FOSUA AND ADU-POKU V DUFIE (DECEASED) AND ADU POKU-MENSAH

[2009] SC GLR 310 at 323 -327. The standard required in civil matters are on the preponderance of probabilities as set out in section 12 of NRCD 323 (Supra). 4 In relating the above to the onus placed on the plaintiffs, they led evidence and established the fact that the subject plot 110 block 2 is distinct from the defendants plot of land. Indeed, the plaintiffs averred that the late Benewaa who is mother to the 1st plaintiff is built three bedrooms on the said plot of land and that the 1st plaintiff has been in possession of same till date without any challenge. The documents the plaintiffs relied on that is the grant of plot for building and site plan (exhibit A &B) also confirmed their case as held in the case of MAJOLAGBE V LARBI [1959] GLR 190. The 1st Defendant who also claimed the disputed land was acquired by the 2nd defendant relied on his documents of the grant of building of plots 137 and 164A and the site plans (exhibits 3,4,6 and 7). He was quick to add that the area was rezoned by the stool thus, his plots changed numbers to 34 and 35 (exhibits 5 and 8) respectively. Now, since the subject matter bothers on a residential land, I got the Registrar to write to the Physical Planning Officers at the Municipal Assembly to join us to the site for assessment. At the site the officers inspected the documents of both parties and took measurements of both parties properties. Indeed, I saw the three bedrooms built on a portion of the plaintiffs land. And also saw the adjoining vacant land on which the 1st plaintiff had cultivated some perennial crops. It was the said vacant land that the plaintiff alleged the 1st defendant hired a caterpillar truck to grade for which reason he initiated the current proceedings. Let me be quick to add that the 1st defendant denied the 1st plaintiff's assertion though. Having taken the measurements of both properties per their own site plans, it turned out that the plaintiffs are within the confine of their plot number 110 block 2 whereas the defendants plots 34 and 35 lie close to each other and not opposite each other as the defendants sought to suggest to the court. 5 In the instant case, the 1st defendant sought to lay adverse claim to the vacant portion of the plaintiff's land as his plot 34 and the vacant plot 35 which lies opposite as his two plots. However, having perused the very site plans of his, that is exhibits 5 and 8 to the master plan from the Physical Planning Office, it turned out that the defendants claim to the plaintiffs vacant land was an error. Instead, I saw that the plot 34 and 35 lies adjacent to each other and not opposite each other as speculated by the 1st defendant. Thus, having considered the evidence adduced by both parties with their documents the law and my observation on the ground. I find that the plaintiffs were able to substantiate their case on the preponderance of probabilities as set out in NRCD 323 (Supra). Thus, I adjudge the case for the plaintiffs for their claim. And declare title of the vacant portion of plot 110 block 2 as well as the four bed rooms constructed on same to the 1st plaintiff. The defendants are

perpetually enjoined from any interference of the said property. Cost of GH¢1,000.00 is awarded against the defendants for the plaintiffs jointly and severally. SGD H/W CYNTHIA NUEKIE BLAGOGEE DISTRICT MAGISTRATE 6

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://ghalii.org/akn/gh/judgment/ghadc/2024/329/eng@2024-07-22/source.pdf>

CASE PAGE <https://chat.esheria.ai/case-law/ghana/eric-ampomah-v-kwesi-oppong-declarationoftitle-ghadc-2024>

Prepared on 26 October 2026 · Esheria