

GHANA / JUDGMENT

ABAIDOO VRS AWOTWE & 2 OTHERS (E1/6/2017) [2024] GHAHC 81 (30 January 2024)

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IN THE SUPERIOR COURT OF JUDICATURE. IN THE HIGH COURT OF JUSTICE HELD AT CAPE COAST IN THE CENTRAL REGION ON TUESDAY, THE 30TH DAY OF JANUARY, 2024 BEFORE HIS LORDSHIP JUSTICE BERNARD BENTIL - HIGH COURT JUDGE. SUIT NO.: E1/6/2017
EBUSUAPANYIN JOHN PEPE ABAIDOO

- PLT./JUD./CREDITOR VRS
- 1. EBUSUAPANYIN EKOW AWOTWE
- 2. THE REGIONAL LANDS COMMISSION
- 3. KOJO ABAKA
- DEF./JUD./DEBTOR AND ANNAN JACKSON
- CLAIMANT

JUDGMENT

This is an interpleader suit arising out of a claim by the Claimant, Annan Jackson, to piece of land adjudged to be the property of the Plaintiff/Judgment Creditor in the substantive suit against the 1st and 3rd Defendants/Judgment Debtors. The facts giving rise to this instant suit are that by an Amended Writ of Summons and Statement of Claim filed on 21st June, 2017 the Plaintiff/Judgement Creditor claimed against the Defendants in the original suit the following reliefs:

- a. An order directed against the 2nd Defendant to expunge from their records the statutory declarations of the 1st and 3rd Defendants plotted on their records.
- b. Damages for trespass against the 1st and 3rd Defendants.
- c. Recovery of possession of all lands covered by the statutory declaration of 1st and 3rd Defendants. 1

- d. Perpetual injunction restraining 1st and 3rd Defendants from having anything to do with Plaintiff's landed properties. The claims of the Plaintiff/Judgment Creditor were barely contested as the Defendants, despite service of all process on them failed to participate in the trial. This Court, differently constituted, after the hearing the Plaintiff and the evidence adduced by the Plaintiff/Judgment Creditor, entered judgment in favour of the Plaintiff/Judgment Creditor on 5th December, 2019 for all the reliefs sought. The Plaintiff/Judgment Creditor subsequently obtained leave of Court to issue a Writ of Possession in the enforcement of the judgment obtained in his favour whereby he took possession of the land adjudged in his favour. In the affidavit of interest filed by the Claimant on 14th November, 2022 he deposed that he is the Ebusuapanyin of the Kona Royal family of Moree and the subject matter of this instant suit is known as Bomis and belongs to his Kona royal family thus does not belong to the Plaintiff/Judgment Creditor. He further deposed that the virgin forest of the disputed land was broken many years ago by his ancestors who migrated from Adansi in the Ashanti Region southwards and settled within the environs of Moree. The disputed land (Bomis) shares boundaries with the Ekon or Queen Ann's point village and Ekon lagoon as well as the Gulf of Guinea and with Kona family lands all round it including Green Hill lands, Addison square spot, Moree barrier, Moree junction among others. The land also shares boundaries with Brafo Yaw and Eguase and measures 218.181 acres or 88.363 hectares. The Claimant further deposed that the Plaintiff/Judgment Creditor's predecessor, Ebusuapanyin Kweku Boafu (deceased) during his tenure as head of the Plaintiff's Anona family never interfered with the Claimant's family's interest in the disputed land. The Claimant's family entrusted the care of the land to Nana Kojo Mensah (deceased) through Nana Adzekese X. Kojo Mensah registered a Statutory Declaration in his name with the Lands Commission on behalf of the Kona royal family. Further, Ebusuapanyin Ekow Awotwe (the 1st Defendant) was appointed as the caretaker of 2 the land and succeeded Supi Kwesi Ntsin as the caretaker of the land for and on behalf of the Kona family. Supi Kwesi Ntsin was appointed the caretaker by Nana Adzekese X. The Claimant again deposed that at the time of the substantive action between the Plaintiff/Judgment Creditor and the Defendants/Judgment Debtors, the 1st and 3rd Defendants had died and none of them notified the Kona family about the pendency of the suit hence the failure of the Claimant's family to join the suit as co-defendants. It was after the delivery of the judgment and during the execution of the judgment that the Claimant's family got wind of the suit. The Claimant deposed that the judgment was not on the merits of the case. The evidence adduced by the Plaintiff/Judgment Creditor before the Court which never the heard the Defendants was not tested nor challenged. The said judgment, the Claimant depose, was procured by fraud in that, what the Plaintiff/Creditor told the court about his ownership of the land was false. On the basis of the above, the Claimant contends that the land in dispute does not belong to the Plaintiff/Judgment Creditor and his Anona family of Moree. On the other hand, the Plaintiff/Judgment Creditor denied the claims of the Claimants and stated that the Claimant is only seeking to frustrate the lawful enjoyment of the fruit of his judgment. According to the Plaintiff/Judgment Creditor, the Claimant has no claim to any portion of the land so decreed in the judgment. The Plaintiff deposed that the suit was in respect of a large tract of land

belonging to his family, the Nana Amanyi Anona family of Moree Alata which land his predecessor, Ebusuapanyin Kwame Annan alias Kweku Boafo caused a Statutory Declaration to be prepared on as far back as 1978. This was processed by the Regional Lands Commission, Cape Coast as Doc. No. CCT 485/78 and registered as the Deed Registry as Doc. No. 2448/1979. 3 The Plaintiff further deposed that prior to this Statutory Declaration in 1978, his ancestors had been the allodial owners of the land without any contest from anyone, including the ancestors of the claimant. After the Plaintiff ascended the seat as the Head of family and assumed custodianship of the family's properties, there were still no legitimate contest in respect of the same land. The Plaintiff deposed that the Claimant has no evidence to support his claim as there is indeed none and is only seeking to frustrate his legitimate execution. The Plaintiff deposed that the Claimant was aware of the pending suit but made no attempt to join and the reason is that he has no legitimate claim to the land and is therefore estopped in re-litigating this matter. The Claimant's acts are fuelled by the judgment debtors to ostensibly hamper the completion of the execution process thus their interpleader action is brought in bad faith. In actions of this nature, it is trite that the Claimant must set out facts which connote proof of his ownership and adduce evidence to satisfy the court of same on the balance of probabilities as required in civil actions that the property is the Claimant's. See section 12 of the Evidence Act, 1975 (N.R.C.D. 323). This conforms with the principle of law that he who asserts must prove. The law requires all matters capable of proof to be proved by producing sufficient evidence so that on all the evidence, a reasonable mind could conclude that the existence of the facts alleged is more reasonable or probable than its non-existence. Thus, scrutinising the evidence in its entirety, I find that the Claimant has not led or adduced any substantial evidence establishing his ownership to the land. In effect, the real substance of the Claimant's case is to impeach the judgment of this court (differently constituted) dated 5th December, 2019 on the grounds that at the time of the substantive action against the 1st and 3rd Defendants, they were dead and none of them notified the Claimant's family. Further, the Claimant contends that the said judgment was procured by fraud in that what the Plaintiff/Judgment Creditor told the Court about his ownership to the land was false. 4 The above fact is further made clear in the arguments of counsel for the Claimant in his written submission filed on 19th December, 2023. The relevant part of the written submission is reproduced below: It is submitted that the content of the judgment itself does not help this court any way. A careful reading of the judgment shows that it is defective in:

1. That it does not disclose the location of the disputed land.
2. That it does not disclose its boundaries.
3. It does not disclose the size of the disputed land even though the claimant mentioned the disputed land as measuring 218 acres.
4. The Plaintiff who testified on oath did not say anything of substance to help the court- all that he said was that the disputed land belonged to his family.

5. That the contents of the so-called Statutory Declaration was not made known to any one-so as to help an enquirer decide whether it relates to a known tract of land and where the land is located. It is submitted that this is a case where justice could be seen to be done if the claimant could be ordered to prove this case against the plain tiff by initiating a fresh action against the plaintiff if he so wishes or vice versa. This suit being an interpleader action, I find the above grounds and/or arguments by Counsel for the Claimant highly untenable. An interpleader proceeding is not a quasi- appeal against a judgment entered in favour of a judgment creditor. The court's duty in interpleader proceedings is simply to determine the ownership or otherwise of the claimant to the property attached in execution. The rules of court provide avenues for challenging or setting aside a judgment procured by fraud and interpleading is not one of them. As stated supra, a claimant bears the onus of establishing his own title to the property in dispute and like all claims for declaration of title, the claimant must succeed on the strength of his case. It is only when he has established a prima facie case that the 5 claimant can highlight and rely on the weakness of his opponent's case. This rule was clearly explained by the Supreme Court in the case of NARTEY V MECHANICAL LLOYD ASSEMBLY PLANT LTD (1987) 2 GLR 314 at page 344, where Adade JSC in a scholarly judgment held that: A person who comes to Court, no matter what the claim is must be able to make a case for the court to consider otherwise fails. But that is not to say that having succeeded in establishing some case he cannot take advantage of conflicts, admissions and other weaknesses in the defendant's case. See also ROLAND KOFI DWAMENA V RICHARD NORTEY OTOO AND THE REGIONAL LANDS OFFICER [2017] 113 G.M.J. 46 @ 57. Applying the rule above, the Claimant herein must establish a strong case of ownership to succeed in this action and it is not enough to merely attack the judgment or invite this Court to go into the merits of an already determined matter. To the contrary, the Claimant has done little to satisfy this Court of his ownership of the subject matter of this case, hence this action must fail. The interpleader suit is accordingly dismissed. Cost of GH¢2,500.00 is awarded against the Claimant. (SGD) BERNARD BENTIL, J. [HIGH COURT JUDGE] COUNSEL SABINA BOLSON YOUNG ESQ. FOR THE PLAINTIFF/JUDGMENT/ CREDITOR. GUSTAV ADDINGTON ESQ. FOR THE CLAIMANT. 6

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