

GHANA / JUDGMENT

Boadu Vrs Amanie & 2 Others

[2023] GHADC 244 (10 July 2023)

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COURT

District Court

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IN THE DISTRICT COURT HELD AT SEFWI JUABOSO ON MONDAY, THE 10th DAY OF JULY, 2023
BEFORE HIS WORSHIP SAMUEL ENTEE JNR ESQ. THE MAGISTRATE SUIT. NO. A1/28/22 ISAAC
BOADU VS

1. KOJO AMANIE
2. THE ANGLICAN CHURCH, SEFWI BOINZAN
3. BROTHER ISAAC Plaintiff Present 1st Defendant Present 2nd Defendant Church represented by the catchiest, Isaac Asiedu Gyamfi Present 3rd Defendant Absent

JUDGEMENT

The plaintiff issued a writ of summons on the 18th May, 2022 against the 1st and 2nd defendants for a declaration of title, recovery of possession, general damages for trespass and perpetual injunction in respect of a land at “Pronuro nu” on Boinzan stool land and bounded by the properties of Yaa Twumwaa, Opanin Kwabena Bennie, the late Ababio and the Anglican Church at Boinzan, which land the defendants had encroached upon and operating galamsey on it. On the 22nd June, 2022, the defendant filed a motion on notice to join Brother Isaac to the suit, and the court granted it on 7th July, 2022 and joined him as the 3rd defendant. It is the case of the plaintiff that the land in dispute belonged to his late uncle Kwabena Tawiah. That his Uncle Kwabena Tawiah and grandfather Opanin Yaw Mensah gave their secondary forest to the 2nd defendant church to farm on it. So the 2nd defendant 1 | P a g e did not break any virgin forest. But Kwabena Tawiah maintained the disputed land, which was swampy and cultivated okro, pepper, tomato and others on it, and his Uncle Kwabena Tawiah gifted the land to him before he died. The plaintiff said Kwabena Tawiah’s land gifted to him shared a boundary with Opanin Kwabena Bennie. The plaintiff said he and his mother and siblings cultivated Okro, pepper, tomato and others on the land in dispute. That the second defendant church had encroached on his soggy or swampy land and operated illegal mining on it. The defence of the defendants was put up by the 2nd defendant, Isaac Asiedu Gyamfi, who is the Catchiest of the 2nd defendant church and represented the said church. It is their case that the land in dispute was a gift in its

virgin forest state from the then chief of Anyinam called Nana Atta Kwame and two (2) other persons, Peter Ankamah and Joseph Yaw oppong, who were members of the second defendant's church to establish a branch of the church at Anyinam. That the second defendant church cultivated oil palm on the land in dispute and the adjoining dry land and after uprooting the palm trees, the 2nd defendant church cultivated cocoa on the dry land and also cultivated sugarcane and rice on the soggy or swampy land which was the disputed land. That the church shared a common boundary with plaintiff's mother, Kate Akyea on the swampy land and had not encroached upon plaintiff's swampy land to operate galamsey on it. The issues for determination are:

1. Whether or not the plaintiff's uncle, Kwabena Tawiah gave the land to the 2nd defendant church.
2. Whether or not the disputed swampy land was part of the land gifted to the 2nd defendant church.
3. Whether or not the disputed land belonged to the plaintiff
4. Whether or not the defendants had trespassed unto plaintiff's land
5. Whether or not the plaintiff is entitled to his claim. 2 | P a g e
ISSUE 1: Whether or not the plaintiff's uncle, Kwabena Tawiah gave the land to the 2nd defendant church. The plaintiff said his Uncle Kwabena Tawiah and Opanin Yaw Mensah gifted their secondary forest to the second defendant's church to farm on it. The 2nd defendant however said the land was gifted to them by elders of the church who were the then chief of Anyinam Nana Atta Kwame and two other persons, Peter Ankamah and Joseph Yaw Oppong. During the cross examination of the 2nd defendants the following ensued: Que: When the Anglican Church went to the Anyinam chief for the land, was it for farming or constructing a building? Ans: The land was acquired for the construction of the church building and the elders who granted it to us said we could use the remaining land for whatever we wanted. Que: I put it to you that my mother Kate Akyea was part of those who went to the chief for the land. The land was for the construction of the church building and the mission house. No extra land was acquired for farming purposes by the church. Ans: The land was granted to us by the elders. You said your Uncle Tawiah was the one who granted the land to the Anglican Church but none of your witnesses confirmed it, and the church does not know your said uncle. It seems from the question asked by the plaintiff in the cross examination above, that the chief of Anyinam gave the land to the 2nd defendant church to put up their building on it. So the question to answer is, when did the plaintiff's Uncle Kwabena Tawiah and his grandfather Opanin Yaw Mensah granted the land to the church? According to Kwabena Bennie (PW1) who lived at Sefwi Anyinam, Opanin Yaw Mensah who was then the chief asked him and three other persons, Yaw Darko, Adu 3 | P a g e Yaw, and Ankamah to go unto his secondary forest, which shared boundary with Plaintiff's uncle Kwabena Tawiah's secondary forest, and give a portion to the 2nd defendant church. He said Kwabena Tawiah also added his secondary forest to Opanin Yaw Mensah's secondary forest and gave it to the

2nd defendant church to farm on it. But during the cross examination of PW1 the following transpired: Que: You stated in your witness statement that Nana Mensah sent you and 2 others to demarcate his land to the Anglican Church. When did this take place? Ans: I don't remember the exact date but it was during the Christmas period. Que: Was it only Nana Mensah who sent you or he and others sent you? Ans: Okyeame Danso was present as well as Asieduwaa Que: Did any other person apart from Nana Mensah also had land there which was shown to you? Ans: No other person had land there. Que: I put it to you that you stated that Kwabena Tawiah also granted his land to the Anglican Church in addition to what Nana Mensah granted. Ans: It is not so. Kwabena Tawiah did not grant land to the church. Even though PW1 said in his evidence-in-chief that Kwabena Tawiah gave his land to the Anglican Church but under cross examination, he said Kwabena Tawiah did not grant any land to the church. The evidence of PW1 in his cross-examination negated his evidence on this issue in his evidence-in-chief. And this negation enures to the benefit of the 2nd defendant church as it rather confirmed the 2nd defendant's evidence that it was not Kwabena Tawiah who granted his land to the church, and conflicted with plaintiff's evidence that his Uncle Kwabena Tawiah gave his land to the church. As was held in the case of *Atadi V. Ladzekpo* (1981) GLR 218, CA, whenever the evidence of a party on a critical issue was in conflict with the evidence of his own witness on that issue, it was not open to the court to gloss over such a conflict and 4 | P a g e make a specific finding on that issue in favour of the party whose case contained the conflicting evidence. In fact, when the 2nd defendant put it to the plaintiff that it was not his uncle Kwabena Tawiah who gave the land to the Anglican Church, the plaintiff replied that it was his grandfather, Yaw Mensah who gave the land to Church. The evidence therefore shows that the plaintiff's uncle Kwabena Tawiah did not give land to the church. Since the evidence showed that it was Nana Yaw Mensah and Nana Atta Kwame who were chiefs of Anyinam who gifted land to the church, I find that the plaintiff's uncle Kwabena Tawiah did not give land to the 2nd defendant church but rather the chief of Anyinam gifted land to the 2nd defendant church. **ISSUE 2. WHETHER OR NOT THE DISPUTED SWAMPY LAND WAS PART OF THE LAND GIFTED TO THE 2ND DEFENDANT CHURCH.** The plaintiff said the disputed land was part of his uncle kwabena Tawiah's land which shared boundaries with Opanin Kwabena Bennie, Opanin Yaw Mensah, (Anglican Church) Maame Akosua Nyarko daughter of Yaa Twumwaa and Augustine Ababio (Late Ababio). The 2nd defendant said the disputed land was part of the land given to the church. And was bounded by the properties of Kofi Asiedu, Opanin Kwabena Bennie, late Atta Kofi, Ama Benkye, Kate Akyea and elder Atta. From the evidence of the plaintiff and 2nd defendant, Opanin Kwabena Bennie (PW1) shared boundaries with both parties. PW1 told the court that he and kwabena Tawiah shared the Swampy land and he had been in possession of his side of the swampy land since then and Kwabena Tawiah cultivated okro, pepper tomato and other vegetables on his portion of the swampy land and the plaintiff also continued to cultivate vegetables on the swampy land. When the 2nd defendant asked him where the plaintiff actually planted the vegetables, PW1 replied that the plaintiff planted the vegetables on the swampy land. In his evidence in chief the 2nd defendant said the 5 | P a g e church shared a common boundary with the plaintiff's mother Kate Akyea in the soggy land.

According to plaintiff his uncle gifted the land to him in 1980 and went on transfer as a government worker in 1988 and left the land for his mother and siblings to continue to work on the land. John Kwasi Nsiah (DW1) a member of the second defendant church also said the plaintiff's late Uncle Kwabena Tawiah only cultivated rice on the soggy land which shared a common boundary with the second defendant church and Opanin Kwabena Bennie. During the cross examination of DW1 the following transpired; Question: You stated that you saw my uncle, Kwabena Tawiah cultivating the swampy land, was the swampy land part of the land granted to the Anglican Church? Answer: The swampy land was part of the land granted to the Anglican Church. Question: So at the time Kwabena Tawiah cultivated the swampy land did the church also cultivate the swampy land? Answer: Yes, the church also cultivated the swampy land and even cultivated oil palm on the swampy land. Question: So are you saying at the time my uncle Kwabena Tawiah cultivated the soggy land with rice the church was also doing some cultivation there? Answer: Your uncle was cultivating the land after the swampy area. The church cultivated right into the swampy area. The last answer of DW1 from the cross examination above that Kwabena Tawiah rather cultivated the land right after the swampy land was in contradiction of DW1's own evidence-in-chief that Kwabena Tawiah cultivated rice on part of the swampy or soggy land. Although DW1 said Kwabena Tawiah only cultivated rice on a part of the soggy land, when the plaintiff wanted to know from him whether at the time Kwabena Tawiah cultivated the rice, the 2nd defendant church also cultivated the soggy land, DW1 could not tell the court that both Kwabena Tawiah and the church cultivated different parts of the soggy land at the same time. He rather said Kwabena Tawiah did not even cultivate the soggy land at all, but rather he cultivated the land after the swampy land. DW1 told the court that the chief of Anyinam gave the land to the church about 60 years ago. When it was put to him that it was not up to 60 years since the land was given to the church, he replied that he was telling the truth and that he was not even born when the land was given to the church and was informed about it when he grew up. But he went ahead to tell the court that he was about 80 years old. If that was the case then he would be about 20 years old at the time the land was given to the church and would have known it unless of course he was not living in Anyinama at that time but he did not say so. It is the view of the court that DW1 is not a credible witness and therefore his evidence that Kwabena Tawiah cultivated the land after the soggy area is deemed by the court as an afterthought and not reliable especially, as the 2nd defendant had said the church shared a boundary with plaintiff's mother Kate Akua Akyea, in the soggy land. Opanin Kwabena Bennie (PW1) who shares boundaries with both the plaintiff and the 2nd defendant church, told the court that the disputed swampy or soggy land belonged to Kwabena Tawiah and for that matter the plaintiff's land did not belong to the second defendant church. Generally a party who is seeking a declaration of title to land must call all those he shares boundaries with as witnesses to support the party to prove his or her boundaries to the disputed land. However in this case the dispute was over the swampy or soggy land and PW1 was the only person who shared boundaries with both parties at the disputed area. The court is of the view that he was an honest and credible witness due to the fact that although he stated in his witness statement, that is evidence-in-chief, that

Kwabena Tawiah gave his land to the church, under cross examination he said Kwabena Tawiah did not give any land to the church. In the same vein the court is of the considered view that if the soggy land belong to the church PW1 would have told the court that it belonged to the church during the cross-examination. 7 | P a g e The court is therefore inclined to accept the corroborated evidence of the plaintiff that the swampy or soggy land in dispute was not part of the land given to the church, but belonged to Kwabena Tawiah. This inclination by the court to accept the corroborated evidence of plaintiff was fortified by the fact that the 2nd defendant said in cross- examination of plaintiff that one Kwasi Henepa cultivated a portion of the church's dry land and swampy land and they summoned him before the chief's palace and the plaintiff's mother gave evidence for the church that the swampy area where Kwasi Henepa had cultivated belonged to the church in addition to the dry land. But when the plaintiff disputed it and said that his mother gave evidence to support the church that only the dry land belong to the church, the 2nd defendant failed to call further evidence by calling a witness probably from the chief's palace or someone who was a witness when that matter was heard by the chief and elders. So the 2nd defendant failed to produce sufficient evidence to establish what he asserted took place at the chief's palace. Again during the cross-examination of George Gyabeng (PW2), the 2nd defendant said the church had documents covering the church's land. This was when PW2 had stated that the parish priest did not know anything about the disputed land because the church could not make any documents to cover the land. PW2 responded that he had never seen such land documents before although he was the peoples warden for 4 years. But the 2nd defendant failed to tender the said documents in evidence, to strengthen the case of the church. In effect the second defendant failed to produce available evidence, that is, the land documents he talked about to help the church's case. On the evidence before the court therefore, I find that the disputed swampy or soggy land was not part of the land gifted to the 2nd defendant church. **ISSUE 3: WHETHER OR NOT THE DISPUTED LAND BELONG TO THE PLAINTIFF** 8 | P a g e The plaintiff said the disputed swampy land belonged to his uncle Kwabena Tawiah who gifted it to him and he cultivated vegetables on it. Kwabena Bennie (PW1) who shared boundaries with both the plaintiff and 2nd defendant church confirmed the evidence of the plaintiff and added that the disputed swampy land did not belong to 2nd defendant church. George Gyaben (PW2) also said he was the peoples warden of the church for 4 years and saw only the plaintiff, his mother and siblings cultivated the disputed swampy land with vegetables and that none of the church members claimed that the land belonged to the church at the time. The 2nd defendant also said the church shared a common boundary with the plaintiff's mother kate Akyea on the swampy or soggy land. John Kwasi Nsiah (DW1) added that the plaintiff's uncle Kwabena Tawiah cultivated rice on part of the swampy or soggy and which shared a common boundaries with the church and Opanin Kwabena Bennie (PW1). During the Cross examination of the plaintiff he said his uncle gifted the land to him in 1980 when Rev. Father Abisi Ackaah was the priest of the 2nd defendant church. The 2nd defendant did not dispute this piece of evidence by the plaintiff but put it plaintiff that at the time the land was given to him the church was already in possession but the plaintiff replied that the land his uncle gave to him was swampy land, but the Aglican church

land was a dry land. When it was again put to the plaintiff that the church cultivated oil palm on both the dry land and swampy land the plaintiff replied that the church had not cultivated anything on the swampy land before as the oil palm was cultivated on the dry land. Even though John Kwasi Nsiah (DW1) also said under cross examination that the church cultivated oil palm on the disputed swampy land, he could not tell whether it was at the same time the plaintiff's uncle, Kwabena Tawiah cultivated rice on the swampy land. It is the view of the court that the 2nd defendant church did not cultivate oil palm on the disputed swampy land. Again, when 2nd defendant put it to the plaintiff that Kwasi Henepa cultivated a portion of the dry land and the swampy land and they summoned him at the palace 9 | P a g e and the plaintiff's mother gave evidence to support the church that the swampy land and the dry land belonged to the church, and but the plaintiff disputed it, The 2nd defendant could not call a witness to buttress his assertion that the plaintiff's mother gave evidence to support the church that the disputed land belonged to the church. Additionally the 2nd defendant in cross examination of the plaintiff said that they uprooted the oil palm and cultivated cocoa which they harvested for 20 years, this was after the plaintiff had said the Anglican Church had not cultivated anything on the swampy land before. The second defendant did not call any witness to support his evidence of the cocoa he asserted they cultivated on the swampy land. Furthermore the 2nd defendant failed to put in evidence documents of the church land which showed that the disputed land belonged to the church. It is therefore the considered opinion of the court that taking into accounts the evidence before the court, the disputed swampy land belongs to the plaintiff and not the 2nd defendant church. **ISSUE 4: WHETHER OR NOT THE DEFENDANT HAD TRESPASSED UNTO PLAINTIFF LAND** During the cross examination of plaintiff he said the 2nd defendant church had been operating illegal mining on the disputed land and he had destroyed the land. When the 2nd defendant put it to the plaintiff that the church was not operating illegal mining and that the disputed was intact, the plaintiff maintained that the church operated Galamsey on the land and the court even placed an injunction on it, and the Juaboso Police were also aware of the galamsey on the land. The 2nd defendant then put it to the plaintiff that it was rather his mother's land which the galamsey activities were going on as the church shared a boundary with his mother and the church's land which was in dispute had not been used for any galamsey, the plaintiff replied that he reported the church to the police concerning on the disputed land and some people were arrested and the 2nd defendant went and wrote his statement to the police. 10 | P a g e The plaintiff's evidence that he reported the church's galamsey activities on the disputed land to the police and 2nd defendant was invited to the police and he wrote his statement to the police was not disputed by the 2nd defendant. He also did not tell the court that the statement he gave to the police was not about galamsey activities on the church land because the church's land was secured free from any galamsey activities. The records before the court also indicated that the 1st defendant was sued by the plaintiff for operating galamsey on the disputed swampy land granted to him by the church. Again when the plaintiff asked the 2nd defendant that in 2018 her mother was weak and could no longer go on the disputed land and due to that the church sold the disputed land to the Juaboso District Assembly, the 2nd

defendant replied that they did not sell it, that the assembly man of Boinzan came to see the church that the District Assembly needed the swampy land for their one District one factory project in 2017 and they gave it to the Assembly. The church did not sell the swampy land because from the facts before the court the District Assembly did not execute any project on the swampy land and the Plaintiff instituted this action on the basis that the defendant had encroached and operating galamsey on the swampy land which belongs to him. Accordingly, on the evidence before the court I find that the defendant have trespassed onto the Plaintiffs swampy land. ISSUE 5: WHETHER OR NOT THE PLAINTIFF IS ENTITLED TO HIS CLAIM.

On this issue the court has found that the chiefs of Anyinam and others gifted land to the 2nd defendant church. The court has also found that the disputed swampy land belongs to the Plaintiff and has also found that the Defendant have trespassed onto the disputed swampy land which belonged to the plaintiff. Based on the said findings, the court is of the considered view that the plaintiff is entitled to his claim. 11 | P a g e Accordingly, judgment is entered for the plaintiff against the defendant on his claim. Consequently, it is hereby declared that the plaintiff has title to the piece of land at “Pronuro nu” on Boinzan Stool land and bounded by the properties of Yaa Twumwaa, Opanin Kwabena Bennie, late Ababio and Anglican Church at Boinzan. An order of recovery of possession of the said land is hereby made in favour of the plaintiff against defendants. It is hereby ordered that general damages of GH¢ 1,000.00 is made in favour of the plaintiff against the defendant jointly and severally for trespassing onto plaintiff’s swampy land. An order of perpetual injunction is hereby placed on the 2nd defendant church and the other 2 defendants restraining them their workers, members, representatives, parties or any person or body claiming through them, from entering the swampy land the subject matter of this suit or from having anything to do with the said land. Cost of GH¢ 1,000.00 is awarded against the defendant jointly and severally in favour of plaintiff. SGD::: SAMUEL ENTEE JNR ESQ THE MAGISTRATE 12 | P a g e

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