

GHANA / JUDGMENT

Somenya Vrs Agbavor [2023]

GHADC 370 (30 March 2023)

[2023] GHADC 370

COURT

District Court

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

IN THE DISTRICT COURT HELD AT DZODZE ON TUESDAY THE 30TH OF MARCH, 2023 BEFORE HIS WORSHIP NELSON DELASI AWUKU, DISTRICT MAGISTRATE. Suit No. A1/26/21 SOMENYA KORBBI PLAINTIFF VRS MICHAEL AGBAVOR DEFENDANT

JUDGMENT

PARTIES PLAINTIFF - PRESENT DEFENDANT - PRESENT INTRODUCTION/BACKGROUND: Per a Writ of Summons filed on 20th April, 2021 in this Court, the Plaintiff prayed for the following reliefs;

- a. Declaration of title, recovery of possession and perpetual injunction restraining the defendant from having anything to do with the land described as follows;
 - i. On one side by the property of Mr. Kpedator ii. On another side by the property of the Roman Catholic Mission, Dzodze iii. On another side by the property of Avuwoada and 1 | P a g e iv. On the last side by the property of Adedze.
- b. Damages for trespass.
- c. Costs and for any further or orders the court may deem fit. CASE OF THE PLAINTIFFS It is the case of the plaintiff that, the disputed land was founded by her great grandfather Torgbui Adzenu several years ago. The plaintiff stated that, her father Korbby was the grandson of Torgbui Adzenu and inherited the land through successive inheritance. The plaintiff stated that her father gifted to her a portion of the land he inherited which she built on and left the portion in dispute vacant. The plaintiff stated that, her father also gave portions of the land to her other siblings including the defendant where he has built and that after the death of their father the family shared his estates including lands among his children. The plaintiff stated that she started construction on her portion of the land and stopped the work due to lack of funds but the defendant recently trespassed unto that portion of her land and erected a bath house without her consent and is also laying claim to ownership. The plaintiff stated that her efforts to restrain the defendant has not yielded any positive results as the defendant claims that females are not entitled to inheritance according to custom. 2 | P a g e

The plaintiff stated that she caused the conduct of the defendant to be reported to the police in Dzodze but the matter could not be resolved hence her decision to seek redress with the court. THE CASE OF DEFENDANT In his defence filed on 18th June, 2021 the defendant admitted that the land was founded by their great grandfather Torgbui Adzenu and that their father Kobby inherited same by way of inheritance. The Defendant stated that, the portion of the land in dispute does not form part of their father's land because that portion was given to the Catholic Church for which reason their father after building left that portion vacant. The defendant admitted the claim by the plaintiff that she was gifted a portion of the land by their father to build on but stated that the plaintiff built on the exact land given to her and did not leave any vacant portion so the area in dispute cannot be claimed by her in addition. The defendant denied the claim that he had trespassed unto the plaintiff's land and stated further that the issue could not be resolved by the police because the plaintiff failed to prove her claim. The Defendant averred that, the land in dispute does not belong to the plaintiff but was rather part of the land of the Catholic Church which was left behind after the fencing of their land and that the plaintiff does not have the capacity to question him over the usage of the land since it belongs to none of them.

PROCEDURAL HISTORY

3 | Page The writ in this suit was issued on 20th April, 2021 by the Plaintiff against Michael Agbavor the defendant herein. Realizing that the Catholic Church are necessary parties whose presence will assist in the determination of the issue, an order was made for the church to be joined as second defendants. However, the church indicated to the court that they have no interest in the disputed land and did not wish to be a party.

FACTS

From the pleadings and evidence given by the parties and their witnesses, the court finds the following as the facts;

- a. That both parties are siblings of the same father.
- b. That both parties were allocated portions of land by their late father on which they have built on the same compound.
- c. That the plaintiff is laying claim to a vacant portion of land behind her building.
- d. That the defendant denies the plaintiff's claim to ownership of the vacant portion and states that it originally belonged to the Catholic Church and has now become part of their family land after the construction of their fence.

ISSUES

From the pleadings filed by the parties the following issues were set down for determination;

1. Whether or not the land in dispute was part of the land gifted to the plaintiff?

2. Whether or not the land in dispute formed part of the Catholic Church land?
3. Whether or not the land in dispute is an open land to which none of the parties is entitled? 4 | P a g e
BURDEN OF PROOF The plaintiff who asserts usually has the burden of proving same on a preponderance of probabilities. Preponderance of probabilities according to section 12(2) of the Evidence Act (NRCD 323) 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” Where the plaintiff has been able to lead sufficient evidence in support of his case, then the burden is upon the defendant to lead sufficient evidence in rebuttal or risk being ruled against on the issues. Under section 11(4) of NRCD 323, a party discharges the burden of producing evidence when the party produces 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. In *Okudzeto Ablakwa (No. 2) v. Attorney General & Obetsebi Lamptey (No. 2)* [2012] 2 SCGLR 845, the Supreme Court in dealing with the burden of proof held as follows; “he who asserts assumes the onus of proof. The effect of that principle is the same as what has been codified in the Evidence Act, 1975 (NRCD 323), s 17 (a)...What this rule literally means is that if a person goes to Court to make an allegation, the onus is on him to lead evidence to prove that allegation, unless the allegation is admitted. If he fails to do that, the ruling on that allegation will go against him. Stated more explicitly, a party cannot win a case in Court if the case is based on an allegation which he fails to prove or establish”. 5 | P a g e
 The Court is also mindful of one of the cardinal duties of a Court in evaluating evidence led during trial which is for the Court to assess all the evidence on record in order to determine in whose favour the balance of probabilities should lie. See the cases of *Adwubeng v. Domfeh* [1996-97] SCGLR 660 and *Takoradi Flour Mills v. Samir Faris* [2005-2006] SCGLR 882. **SUMMARY OF EVIDENCE** The plaintiff testified by herself and also called one other witness namely Tagbolo Vincent (PW1). The defendant also testified by himself and called one other witness Bless Kpedator (DW1). A locus report generated from the Court’s visit to the disputed land was also tendered in evidence and adopted as Exhibit C1.

ANALYSIS

Issue One (1) and two (2): Whether or not the land in dispute was part of the land gifted to the plaintiff or formed part of the Catholic Church land which later reverted to the family? It is the case of the plaintiff as stated in paragraphs 11 and 12 of her evidence in chief that her father gave her the land and she built on it and left the portion in dispute. This assertion is denied by the defendant who also claim that the land was not part of the land gifted to the plaintiff by their father and that it was after the Catholic Church fenced their land that the little portion behind their wall became but of the land. 6 | P a g e
 In *Klah v. Phoenix Insurance Co. Ltd* [2012] 2 SCGLR 1139 it is held that, “Where a party makes an averment capable of proof in some positive way e.g. by producing documents, description of things, reference to other facts, instances and his averment is denied, he does not prove it by merely going into the witness box and repeating that averment on oath or having it repeated on oath by his witness. He proves it by producing other

evidence of facts and circumstances from which the court can be satisfied that what he avers is true". The onus therefore was on the plaintiff who avers that the land was part of the land given to her by her late father to prove same. In his evidence in chief in support of the case of the plaintiff, the plaintiff's witness, PW1, stated that he was about twenty (20) years old when his grandfather gave the land to his mother to build on and that his mother to the knowledge of her father and the defendant herein built on the land and left the portion in dispute vacant. Under cross examination, the defendant sought to challenge the age of the witness and his claim to be available at the time of the allocation of the land to her mother but there was not enough to cast the evidence into doubt since the witness was resolute and consistent in his responses. In his evidence given as the court witness, Rev. Father Ashiagbor stated that he could not confirm what the defendant was saying since the land was long acquired before he came. He stated further that the interest of the church currently is in the land that its fences cover and that they do not have any interest in lands outside the fence. In confirmation of the defendant's argument that the land in dispute became part of the family land after the Catholic Church constructed their fence, his witness DW1 stated in paragraphs 4, 5, 6, 7, 8 and 9 of his evidence in chief as follows; 7 | P a g e "4. I know about the land the subject matter in dispute.

5. The land in dispute belongs to the Catholic Mission in Dzodze.
6. The land in dispute shares boundary with both the Plaintiff and Defendant's land respectively.
7. When the Catholics wanted to fence their land and because they wanted a straight wall, they left some small portion of their land behind the wall and that small portion is what is in dispute now.
8. Because both the plaintiff and defendant shares boundary with the said land in dispute it has become a back yard for both of them.
9. The land in dispute herein is no man's land". On a locus visit to the land, it was revealed just as the witness for the defendant stated that the actual portion of the land in dispute was just a little portion between the wall and the buildings both parties have on the land. Rather than the explanation that the Catholic Church left that portion of land because they wanted a straight wall, the court is of the opinion that it is for the purposes of convenience that the church may have left that space since constructing their fence too close to the neighbouring land would have interfered with usage by the owners of the buildings close to the fence by restricting access to light, ventilation and right of way to their backyards. Issue three (3): Whether or not the land in dispute is an open land to which none of the parties is entitled? The ideal expectation is that all the parties whose buildings are close to the fence wall will be restrained to the immediate land close to their buildings, since any attempt to embark on any project behind the building of another is likely to create nuisance and interfere with peaceful enjoyment. 8 | P a g e The witness for the defendant whiles under cross examination on 10th March, 2023 affirmed the above position and the fact that it is the plaintiff who currently has her washroom on that portion of the land and stated further that

he has also used a portion of the land close to his building to construct a washroom. Q. Does the space left by the Catholic Church also shares boundary with you? A. Yes. A portion of that land is my backyard, that is where I have constructed my washroom. Q. So does it mean where you have put up your washroom is also not for you? A. Yes. But after the Catholics constructed the wall they told us we can use it. Q. Can anyone therefore claim that portion behind your house from you? A. Nobody can take it from me. Q. Then how different is your situation from the portion behind my building? A. It is not different. You have also constructed a washroom on it. By way of positioning and acts of possession, although both parties have buildings that share boundary with the fence wall of the Catholic Church, it is the court's considered opinion that the area in issue largely falls behind the back yard of the plaintiff and it is not within the right of the defendant to embark on any development there since same will interfere with the plaintiff's usage. Therefore, the claim that the portion is a no man's land is found untenable. 9 | P a g e

CONCLUSION

There being no other issues arising from the pleadings and evidence, Judgment will be entered for the Plaintiff as follows;

- a. The plaintiff is granted right of control over the portion of land at her backyard between her building and the fence wall of the Catholic Church as described by her.
 - b. Both parties are restrained from embarking on any project or activities that transcends the area behind their respective buildings and into the portion of one another.
 - c. The plaintiff's claim for damages is refused and a cost of Five Hundred Ghana Cedis (GH¢500.00) is settled in her favour against the defendant. NELSON DELASI AWUKU
- MAGISTRATE 10 | P a g e

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/2023/370/eng@2023-03-30>

CASE PAGE <https://chat.esheria.ai/case-law/ghana/somenya-korbby-v-michael-agbavor-declarationoftitle-district-court-2023>

Prepared on 29 October 2026 · Esheria