GHANA / JUDGMENT

Donkor Vrs Abadio [2023] GHADC 170 (2 June 2023)

[2023] GHADC 170

COURT
District Court

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SITTING IN THE DISTRICT COURT AT WENCHI IN THE BONO REGION ON FRIDAYTHE 2ND DAY OF JUNE, 2023. BEFORE HIS WORSHIP ISSAH ABDUL-WAHAB ESQ. (MAGISTRATE) SUIT NO: A1/38/2022 YAA DONKOR OF AWISA ..... PLAINTIFF VS ABABIO OF YABRASO ..... DEFENDANT

JUDGMENT

The plaintiff herein brought this action against the defendant seeking the following reliefs from the court;

a) A declaration of title to and recovery of possession of all that piece or parcel of farmland lying, situate and being at a place commonly known and called “ATWEREDE” near Nsawkaw on Nsawkaw stool lands and bounded by the properties of J. W. K Ameyaw, Kosua Kupor, Baba and the late Kwesi Nyamekye and Anthony Kwame Twumasi respectively.

b) General damages for trespass,

c) An order for perpetual trial injunction restraining the defendant, his agents, assigns, privies, labourers, descendants and all those who claim through him from entering the land. Having considered the pleadings of the parties as filed, the following issues were set down for trial;

1) Whether or not the disputed land was gifted to the plaintiff and her children;

2) Whether or not the land is the property of the plaintiff;

3) Whether or not the plaintiff has any title to the land;

4) Whether or not the defendant committed any trespass; 1 | P a g e

5) Whether or not the plaintiff is entitled to any damages;

6) Whether or not the plaintiff is entitled to a recovery of possession of the land in dispute. The evidence of the plaintiff herein in proof of her claims consisted her (plaintiff) witness statement and the testimony of her (plaintiff) sole witness (PW1). In her testimony the

plaintiff told the court she is Yaa Donkor and that she lives at Awisa and is a farmer. That she knows the defendant. Plaintiff said she knows the disputed land which is situate and lying at "Atwerede" near Yabraso. That her late husband gave the said land to her and her children. That the said late husband then came to court with one Anane George to prepare an affidavit to give the land to her (plaintiff) and her children. Plaintiff said George Anane was her (plaintiff) witness whiles one Kwesi Asare was witness for her (plaintiff) late husband. That her (plaintiff) husband died four (4) years ago. Then after the death of her (plaintiff) husband the head of her (plaintiff) late husband's family called Mr. Anane George and told him to go and give the land to her (plaintiff) and her children. That George Anane went to the land and met the defendant herein on the land and he had cultivated cashew on seven (7) acres of the land. That when they asked defendant, he said plaintiff's late husband sold the land to him (defendant). Plaintiff said she (plaintiff) asked defendant to produce evidence that he bought the land from her (plaintiff) husband. That the defendant then brought the papers in the presence of the Sompahene of Yabraso and one Mr. Ansomah and then Peter. That whiles they were reading the agreement, the defendant took the paper away. The sole witness for the plaintiff (PW1) said he is Anane George and that he lives at Yabraso and is a farmer. That he knows the plaintiff who is his (PW1) late friend's wife. He does not however know the defendant. That plaintiff's husband (now deceased) called Samuel Fordjour came to him (PW1) about seven (7) years ago and said he wanted to give his land to the plaintiff and her children. That the 2 | P a g e plaintiff's husband then went to the court in Wenchi and swore an affidavit that he will give the land to the plaintiff and children. PW1 said he was the witness for the plaintiff whiles one Mr. Kwesi Asare was witness for the late husband of the plaintiff. The witness (PW1) said four (4) years after the death of the plaintiff's husband, the head of the husband's family and the successor to the plaintiff's late husband called him (PW1) and said he (PW1) should go and show the plaintiff the land her husband gave her (plaintiff). That it's been four (4) years since the plaintiff's husband did. PW1 said he went to the land and saw that the defendant has cultivated cashew on about seven (7) acres of the land. When he (PW1) asked the defendant, he said plaintiff's husband sold the land to him (defendant). PW1 said he then asked defendant to provide evidence that he (defendant) bought the land from the plaintiff's husband. Then the defendant brought some papers in the presence of the Sompahene of Yabraso and one Ansomah and Peter. When they told Peter to read what was on the paper, that the defendant collected the paper and went away. PW1 said that is all he knows about the land. In opening his defence, the defendant said he is Ababio or Dery Abraham and that he is a farmer and lives at Yabraso. That he knows the plaintiff as well as the land in disputed. Defendant said the land is at a place commonly known and called "Atweredem" near Yabraso on Nsawkaw stool lands. That the land shares common boundary with the properties of Akosua Kupor, Kwame Ameyaw, Kwasi Nyamekye and Mallam Baba respectively. Defendant said somewhere in October 2015, the plaintiff's husband sold the said land to him which is seven (7) acres in size. That the plaintiff's husband later transferred same to him (defendant) as per a Deed of Conveyance he executed and which is dated the 30th day of October 2017. Defendant said he paid Gh¢300.00 per acre for the seven (7) acres. Defendant said the plaintiff's daughter witnessed

for plaintiff's husband. That plaintiff's husband said he needed the money to pay the school fees of his 3 | P a g e daughter call Tanaa Linda, who was the witness for the father as already stated. Defendant then tendered a copy of the said "Deed of Conveyance" which was admitted and marked as Exhibit "1". Defendant said that he took immediate possession of the land and started cultivating same until the plaintiff's husband died. That it was after the death of the husband that plaintiff started claiming the land. Defendant said it would have been very supervising for the plaintiff's daughter to witness the sale for her father if indeed there was any gift made of the same land to the plaintiff as she (plaintiff) is alleging. Defendant therefore prayed the court to dismiss the claim of the claim of the plaintiff as it's an afterthought and an attempt to deprive him (defendant) of his (defendant) farm he worked hard for. The sole witness for the defendant (DW1) told the court he is Okyere Daniel and that he is a farmer and lives at Yabraso. That he knows the parties herein. That plaintiff is his mother in-law and the defendant is his (DW1) friend. DW1 said he knows the disputed land. That it is at s place commonly known and called "Atweredeano" near Yabraso on the Nsawkaw stool lands and bounded by the properties of Akosua Kupor, Mallam Baba and Kwame Ameyaw respectively. The witness said in the year 2015, the defendant told him (DW1) he wanted land to farm. That he (defendant) wanted to plant cashew. The witness (DW1) said he then took defendant to see Papa Kwadwo Fordjour (plaintiff's former husband). DW1 said papa Kwadwo Fordjour (now deceased) needed some money to pay the school fees of his daughter (Tanaa Linda). That Papa Kwadwo Fordjour then took defendant to see the disputed land which is seven (7) acres. He then sold same to the defendant for Gh¢2,100.00 at Gh¢300.00 per acre. That the defendant paid the money to Papa Kwadwo Fordjour. That Papa Kwadwo Fordjour then prepared the documents for the defendant and dully signed same. 4 | P a g e DW1 said he witnessed on the document for the defendant. That the plaintiff's own daughter witnessed for Papa Kwadwo Fordjour. That the said daughter is Linda Tanaa. The witness said after the documentation the defendant took immediate possession of the disputed land and planted cashew on same. DW1 said after the death of papa Kwadwo Fordjour about two (2) years ago plaintiff started claiming the land and said it was gifted to her (plaintiff) by the then husband who she divorced before he died. DW1 said he is therefore surprised that plaintiff is laying such claims. This court after a careful evaluation of all the evidence led by the parties, observed that the plaintiff herein claimed that her late husband told her (plaintiff) that he wanted to give the disputed land to her (plaintiff) and her children. That the said land is situate at a place call "Atweredem" near Yabraso. That the husband and one Anane George (PW1) went to the court in Wenchi to swear affidavit which they signed and sealed. That he was giving the land to her (plaintiff). Here it must be stated that the plaintiff though claimed that her late husband gave the disputed land to her and her (plaintiff) children. The plaintiff in describing the said disputed land relative to its identity neither plaintiff nor her (plaintiff) sole witness Anane George properly identified the disputed land as per the boundaries, acreage and or size and the exact location. It must be stressed that nowhere in the plaintiff's witness statement which is now her evidence-in-chief was she named any boundaries owners to the disputed land. Indeed the plaintiff's only witness (PW1) also did not mention those who share boundary

with the disputed land. However, it must be noted that it was only in the plaintiff's statement of claim that she named some four (4) individuals i.e. J. W. K. Ameyaw, Kosua Kupor, Baba and then Kwasi Nyamekye as well as Anthony Twumasi as those who share boundary with the disputed land. And it must be stated that even though these people were named by the plaintiff in her statement of claim, no evidence was led to substantiate the said claim and in fact the plaintiff's sole witness Anane George who also said he was 5 | P a g e the witness of the plaintiff when the purported gift was made, also did not name these four (4) people as boundary owners to the disputed land. It therefore means that the claim by plaintiff that the land that her husband purportedly gave her, shares boundary with the persons she named in her statement of claim has not be corroborated or substantiated. That then means also that the clear identity of the land plaintiff claims herein has not been established. As a matter of fact, it must also be stated that the evidence of the plaintiff herself as presented before this court, showed that the plaintiff does not know the land she claims her late husband gave her and her children. The contents of paragraph 7 of the plaintiff's evidence-in-chief and paragraph 6 of PW1's witness statement clearly provides the basis for the conclusion that the plaintiff does not know the land and that her (plaintiff) husband never gave her (plaintiff) any land before he died. In the said paragraphs referred herein, both plaintiff and her (plaintiff) sole witness (PW1) averred that after the death of plaintiff's husband (Samuel Fordjour), the head of family of the said late Samuel Fordjour called PW1 and told him to go and check the land and to give same to the plaintiff and her children. This I found very curious. Was it the case that up till the death of plaintiff's husband the plaintiff did not know the land? And was it also the case that the plaintiff's husband did not give the land to plaintiff before he died? Obviously what the evidence as contained in the said paragraphs referenced about shows is that the disputed land was not given to the plaintiff as she claimed. This was why she does not know the land and even claimed that there was an instruction by late husband's head of family for PW1 to go and show her (plaintiff) the land. If the land was gifted to the plaintiff and her children as she claims it should not have been difficult for her to call her late husband's family members to come to court to support her claim. This is especially so with the head of her (plaintiff) late husband's family whom both plaintiff and her (plaintiff) only witness (PW1) mentioned in their testimonies. 6 | P a g e It must again be observed that both plaintiff and her sole witness who also said he was the plaintiff's witness at the time the purported gift was made, told the court the plaintiff's husband swore to an affidavit which, in the words of both plaintiff and her witness (PW1) was signed and sealed to evidence the gift made of the land. However the said affidavit has not been tendered or exhibited by the plaintiff in support of her claim and also the perusal of the court. However what the plaintiff has exhibited is a photocopy of a document which is "This indenture with same document also having a sub-title "Deed of Gift". Clearly the court could not tell if the said document exhibited by the plaintiff was an indenture, properly so called or a Deed of Gift? And again a careful reading of the said document revealed it is a photocopy without any reason given by the plaintiff for the use of the photocopy instead of an original copy. And here it must be noted that even though the court expected an original copy, a party may tender a photocopy of a document if there is a good reason to do so and with leave of the

court. It is again very important to state that it is the claim of the plaintiff that her late husband gave the land to her and her children who are grown as well as the family members of the plaintiff's late husband's family. The plaintiff stated that the husband's head of family and his customary successor, called PW1 and told him (PW1) to go and show plaintiff the land. And yet plaintiff failed to call any of these persons to testify in support of the said claim and this the court finds them to be very strange. And again Anane George (PW1) who testified for the plaintiff is neither a member of the plaintiff's family nor the plaintiff's late husband's family. In fact PW1 himself told the court the plaintiff's late husband, Samuel Fordjour was his friend. This therefore confirms the observation made by this court that PW1 is unrelated to both plaintiff and her late husband. Therefore one would have thought that an important matter such as a gift being made of land by a husband to the wife and children, will be done without the knowledge and involvement 7 | P a g e of the families of the husband who is the donor herein and then the wife and children, who are also the donees. As for the document that the plaintiff sought to rely on this court has very serious issues with its authenticity as it's riddled with errors as already prompted out. Also it is important to observe that the defendant told the court he bought the disputed land which is about seven (7) acres from the plaintiff's husband at Gh₵300.00 per acre and paid a total amount of Gh₵2,100.00 for the seven (7) acres and this was sometime in October of 2015. Defendant contended that the plaintiff's husband told him that he needed the money to pay the school fees of his daughter. Defendant again said after he paid the money, the plaintiff's husband transferred the land to him (defendant) as per a "Deed of Conveyance" dated the 30th day of October, 2017. That soon after that he (defendant) took immediate possession of the land and started cultivating same whiles the plaintiff's husband was alive. That it was after the death of plaintiff's husband whom she had divorced, that plaintiff started laying claim to the land. This piece of evidence led by the defendant and which his witness corroborated in greater detail is extremely instructive. This is so because the defendant has provided a chronologic of events or processes that culminated in his ownership of the land in dispute. And none of these facts have been controverted or dislodged by the plaintiff. If the plaintiff's husband sold the land to the defendant as far back as the year 2015, which same year plaintiff claims as per her statement of claim, that the same husband gave her the land and yet she did not do anything. At least if indeed the land was given to plaintiff as she wants this court to belief, she should have questioned the action of her husband to sell the same land to defendant. This is because as per the dates given, plaintiff claims the gift was made on the 10th of February 2015, whiles the defendant also said he bought the land October of 2015, same year. This means if indeed it was given to the plaintiff as she claims 8 | P a g e that meant the land was no longer available for her husband to sell. But the plaintiff did not do anything and so the land was sold to defendant. Then the plaintiff's husband again transferred the same land to the defendant as per Exhibit "1" and which was witnessed by the plaintiff's own daughter. In deed one of the children plaintiff claims she was given the land with. This claim by the plaintiff can obvious not be true as it simply does not add up. And again, the defendant said after the sale and transfer, he took immediate possession of the land and cultivated same and planted cashew whiles the plaintiff's husband was alive

and yet again the plaintiff never challenged that. This was years after the plaintiff's husband died. Why the plaintiff only waited until her former husband died before she started claiming the land is best known to the plaintiff. The defendant's sole witness (DW1), Okyere Daniel told the court when defendant informed him (DW1) that he needed land to plant cashew, he (DW1) took defendant to the said Papa Kwadwo Fordjour (plaintiff's late husband). So the witness (DW1) corroborated in very material the evidence of the defendant that he bought land from Papa Kwadwo Fordjour (plaintiff's husband) and took possession of same whiles the said Papa Kwadwo Fordjour (the vendor) was still alive. So why did the plaintiff not challenge the sale and only waited until Kwadwo Fordjour died before plaintiff started laying claim to the land. And it is also clear from the evidence that the plaintiff's children she claim were also beneficiaries of the purported gift do not support her (plaintiff) in this attempt to claim the land. That is why none of the children is a party to this suit and none also came to testify in support of the claim by the plaintiff. Indeed none of the members of the family of the said Kwadwo Fordjour (now deceased) has also joined the plaintiff in this action. All these therefore cast very serious doubts and for that matter derailed the claim by the plaintiff that was given the disputed land. 9 | P a g e In an action for declaration of title to land by a party, it is essential that the claimant's root of title to the land as well as the clear identity of the land are established. And from the evidence before this court it has become so apparent that the plaintiff herein has not led sufficient evidence to make out any case for ownership of the disputed land. It has however been clear that the plaintiff is only trying to lay the claim following the demise of Kwadwo Fordjour who got married to the plaintiff but they divorced even before Kwadwo Fordjour died. So from the evidence as adduced before this court, I found the following as facts;

1. That the disputed land was the property of one Kwadwo Fordjour (now deceased) who was once married to the plaintiff and they had children.
2. That the said Kwadwo Fordjour somewhere in the year 2015 sold the disputed land to the defendant to raise money to pay his daughter's school fees
3. That after the sale Kwadwo Fordjour transferred his interest in the land to the defendant and the defendant took active possession and has planted cashew on same from 2017 till date.
4. That the defendant started working on the land whiles Kwadwo Fordjour was alive and no one challenged the authority or capacity of Kwadwo Fordjour to sell the land to the defendant.
5. That the claim by the plaintiff that Kwadwo Fordjour gave the disputed land to her in the year 2015 has not been proved. The law is that this suit being a civil one, the party who in his /her pleadings or Writ of Summons raise issues that are essential to the success of their case assumes the onus of proof. In other words the standard burden of proof in civil matters including land, the plaintiff is to produce sufficient evidence to make out a claim on a preponderance of probabilities as defined in section 11 (4) and 12 (1) of the Evidence Act, 1975 (NRCD 323) as follows: 10 | P a g e 11 (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 conclude that the existence of the fact was more probable than its non- existence". Then section 12 (1) states; 12 (1) "Except as otherwise provided by law, the burden of persuasion requires proof by a preponderance of the probabilities. It is therefore important to state that in assessing the balance of probabilities, all the evidence must be considered and the party whose favour the balance tilts is the one in whose favour the verdict must go. Again, the law is that in a situation where a party claims ownership of land, the party must prove the following;

a. His/her root of title to the land;

b. Incidence of purchase if required by sale of acquisition and

c. Evidence of acts of unchallenged possession. See: The case of Nana Amua Gyebu XV Vs Mondial Venner Co. Ltd, [2011]32 MLRG, 84 SC: Having therefore considered all the evidence and the law, it is instructive to state that the plaintiff having laid claim to the disputed land, carried the burden of proving her title to same. This plaintiff however failed to do as required by law. If indeed the land was a gift from Kwadwo Fordjour (plaintiff's late former husband) to the plaintiff and for which title in the land passed from Kwadwo Fordjour (donor) to the plaintiff, then the onus was on the plaintiff to prove her ownership of the land. This the plaintiff failed to do. It is therefore the conclusion of this court, having regard to the evidence and the law as stated above that the plaintiff has failed to prove her claims against the defendant and same failed. The reason for the above conclusion include;

1. That the land in dispute was the property of Papa Kwadwo Fordjour plaintiff's former husband who is now late. 11 | P a g e

2. That the said Papa kwadwo Fordjour sold the said disputed land to the defendant herein to raise some money to pay his daughter's school fees.

3. That the land was sold during the life time of Kwadwo Fordjour without any challenge from any quarter.

4. That the defendant took active possession of the land and planted cashew whiles Kwadwo Fordjour was alive and no one challenged his (defendant) possession.

5. That it is not true as claimed by the plaintiff that her former husband Kwadwo Fordjour (now late) gave the land to her.

6. That the plaintiff failed to prove his root of title to the land and for that matter all her claims as required by law. The case of plaintiff is hereby dismissed entirely. Cost of Gh₵800.00 for defendant and against the plaintiff. .....SGD..... ISSAH ABDUL-WAHAB (MAGISTRATE) 12 | P a g e

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Prepared on 30 October 2026 · Esheria