

**IN THE CIRCUIT COURT HELD AT KUMASI ON MONDAY THE 30TH DAY OF
OCTOBER 2023 BEFORE HIS HONOUR ABDUL-RAZAK MUSAH ESQ. CIRCUIT
JUDGE**

SUIT NO: A1/36/2023

RAYMOND OPOKU AGYEMAN

VRS.

THE DEVELOPER

JUDGMENT

On 30th August 2023, the Plaintiff caused to be issued out of the Registry of the Circuit Court Kumasi a writ of summons accompanied by a statement of claim against the Defendant for the following reliefs:

- a. Declaration of title to all that parcel of land designated as Plot No. 24 Brantuokrom Hemang in the Atwima Kwanwoma District of the Ashanti Region.*
- b. Recovery of possession of the afore described Plot No, 24 Brantuokrom Hemang in the Atwima Kwanwoma District of the Ashanti Region.*
- c. Perpetual injunction restraining the Defendant, his or her assigns, privies, workmen and all others claiming through him or her from in any way interfering with the Plaintiff's use of Plot No. 24 Brantuokrom Hemang in the Atwima Kwanwoma District in the Ashanti Region.*
- d. Damages for trespass.*
- e. Cost.*
- f. Any further order(s) as the Honourable Court may deem fit.*

Having found it impracticable to effect personal service upon the Defendant, the Court, upon application by the Plaintiff, ordered the service of the Writ of Summons

and Statement of Claim on the Defendant to be carried out via substituted service. Having been duly served, the Defendant herein neither entered appearance nor filed a defence.

The Plaintiff's Case

It is the case of the Plaintiff that he acquired Plot No. 24 Brantuokrom Hemang in the Atwima Kwanwoma District of the Ashanti Region from one Awudu Mohammed who had originally been allocated same by the Manwere Stool of Brantuokrom Hemang. It was his father (PW1) Ben Agyeman Duah, who negotiated for the purchase of the plot from Awudu Mohammed. The Plaintiff averred that after he paid the agreed consideration for the plot, Awudu Mohammed prepared a receipt indicating that he had been paid and also executed a document transferring title to the land to the Plaintiff. Awudu Mohammed as at the time of the purchase of the plot had also begun the process of registering his lease under the Otumfuo Osei Tutu II's Lease Documentation Project. He handed over same to the Plaintiff to enable to continue the process of registration in favour of the Plaintiff.

The Plaintiff avers that he took possession of the land and started filling the land with laterite as part of plans to develop it. It was then that the Defendant appeared out of nowhere and started moulding blocks for construction on the land, evincing a clear intention to lay adverse claim to the land unless restrained by the Court.

Burden of Proof

Sections 11 (4) and 12(1) of the Evidence Act 1975 (NRCD) 323 sets out the burden of proof in civil trials. *Section 11(4)* provides that:

"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."

Section 12 (1) also provides that:

"Except as otherwise provided by law, the burden of persuasion requires proof by a preponderance of the probabilities."

The law on the standard of proof required in civil cases is proof by the preponderance of probabilities. It is also the view of the law that the burden of producing evidence shifted from party to party at the various stages of the trial based on the issues asserted or denied. See the case of *In Re-Ashalley Botwe Lands; Adjetey Agbosu and Others vs. Kotey and others* {2003-2004} SCGLR 420 at Page 425.

The Supreme Court had earlier in the case of *Adwubeng vrs Domfeh* [1996-97] SCGLR 660 outlined the standard of proof required in all civil actions at holding 3 of the Head note as follows:

"Sections 11 (4) and 12 of the Evidence Decree [1975] NRCD 323 (which came into force on 1st October 1979) have clearly provided that the standard of proof in all civil actions was proof by preponderance of probabilities, no exceptions were made."

The Law and Evaluation

In the case of *Dr. R. S. D. Tei & Anor vrs. Messr Ceiba International* [2008] as per *G. Pwamang JSC*:

"It must be remembered that the fact that a Defendant does not appear to contest a case does not mean that the Plaintiff would be granted all that he asks for by the court. The rule in civil cases is that he who alleges must prove on the balance of probabilities and the burden is not lightened by the absence of the Defendant at the trial. The absence of the Defendant will aid the Plaintiff only where he introduces sufficient evidence to establish a prima facie case of entitlement to his claim."

Now, having regard to the fact that the Defendant did not avail himself or herself to defend his or her right, if any, against the Plaintiff, by law, the Plaintiff cannot be barred from pursuing his claim against the Defendant herein.

In actions for declaration of title to land, a party who asserts title to land must lead credible and cogent evidence of the mode of acquisition, the identity of the land, any acts of ownership or possession. In seeking to lead evidence of the mode of acquisition, a party may lead evidence to the effect that the said piece of land was acquired by virtue of purchase, gift or by any other valid means. The Supreme Court in the case of *Mondial Veneer (GH) Ltd. vs Amoahh Gyebu XV (2011) SCGLR 466*, where the Court stated in holding (4) that:

“In land litigation, even where living witnesses, directly involved in the transaction had been produced in Court as witnesses, the law would require the person asserting title and on who bore the burden of persuasion, as the Defendant company in the instant case, to prove the root of title, mode of acquisition and various acts of possession exercised over the disputed land. It was only where the party had succeeded in establishing those facts on the balance of probabilities, that the party would be entitled to the claim.”

It was thus for the Plaintiff to bear the burden of adducing credible evidence in support of his claim of title to the land in issue in line with the aforementioned standard.

There is overwhelming and uncontroverted evidence showing the root of title and mode of acquisition of title to the plot in issue in the form of the **allocation paper and site plan (Exhibits “A” and “A1” respectively)** covering Plot No. 24 Brantuokrom which clearly indicate that indeed the Plaintiff’s grantor, Awudu Mohammed, held interest in the land and which same interest had been alienated onto him by the Manwere Stool of Brantuokrom Hemang in June 2011 and endorsed by the Asantehene; and that Awudu Mohammed in 2013 had begun the process of registering his interest under the Otumfuo Osei Tutu II Lease Documentation Project as supported by the **acknowledgement card and its accompanying receipt (Exhibit D)** which was handed over to the Plaintiff to enable him continue the registration in his (Plaintiff’s name).

The evidence also supports a finding of a fact that the Plaintiff did acquire Plot No. 24 Brantuokrom Hemang from the Awudu Mohammed who acknowledged receipt of the payment of the full value of the land (**Exhibit “B”**) and also prepared an indenture (**Exhibit “C”**) manifesting his intention of transferring all rights and interest in the land to the Plaintiff.

Flowing from above and overall, I hold that the Plaintiff has proved his case on the balance of probabilities and on the quality of evidence offered, he is entitled to judgment in his favour. Consequently, I enter judgment for the Plaintiff on all his reliefs as endorsed on the writ.

For purposes of clarity, judgment is specifically entered as follows:

- a. Declaration of title to all that parcel of land designated as Plot No. 24 Brantuokrom Hemang in the Atwima Kwanwoma District of the Ashanti Region.*
- b. Recovery of possession of the afore described Plot No, 24 Brantuokrom Hemang in the Atwima Kwanwoma District of the Ashanti Region.*
- c. Perpetual injunction restraining the Defendant, his or her assigns, privies, workmen and all others claiming through him or her from in any way interfering with the Plaintiff's use of Plot No. 24 Brantuokrom Hemang in the Atwima Kwanwoma District in the Ashanti Region.*
- d. Damages assessed at GH¢10,000.00*
- e. Cost of GH¢5,000.00*

(SGD)

ABDUL RAZAK MUSAH
CIRCUIT JUDGE