

IN THE DISTRICT COURT HELD AT DZODZE ON THURSDAY THE 17TH OF NOVEMBER,2022 BEFORE HIS WORSHIP NELSON DELASI AWUKU, DISTRICT MAGISTRATE.

Suit No. A1/8/12

ALBERT WORMENOR & ANOTHER

}

PLAINTIFFS

VRS

RAPHAEL BOKOR GODWIN SEDZRO

}

DEFENDANT

SUBSTITUTED BY GODWIN SEDZRO

JUDGMENT

PARTIES

PLAINTIFFS PRESENT

DEFENDANT PRESENT

CASE OF PLAINTIFF:

By a writ of summons and statement of claim filed on 10th November,2011 and 6th December, 2011 the plaintiffs claimed the following reliefs against the defendant;

a. Declaration of title and recovery of possession of the piece of land situated at Adagbledu-Dzodze and bounded as follows;

- i) On one side by the property of Bokor Sedzro*
- ii) On another side by the property of Ahiawortor*
- iii) On another side by the property of Agoha and*
- iv) On the last side by the property of Ahorli*

- b. Perpetual injunction restraining the defendant, his agents, workmen, servants, assigns and privies from trespassing unto the disputed land.*
- c. General damages for trespass*

The 1st plaintiff initiated this action for and on behalf of the siblings of the Wormenor family and claimed that, the land the subject matter of dispute was originally founded by Torgbui Dzoku I.

The Plaintiff traced the genealogy of the Wormenor family from Torgbui Dzoku I as follows;

That Torgbui Dzoku I gave birth to Bortsi and Bortsi gave birth to Abede who gave birth to Kumani and Kumani gave birth to Wormenor who also gave birth to Hudoba Wormenor, Atsu Wormenor and Doe Wormenor alongside others.

The plaintiff assert that all the above mentioned persons at various periods exercised possession over and cultivated the land in dispute for several years without any objection from anyone.

The plaintiff assert that the Wormenor family allowed its members to occupy and construct dwelling places on the land without any hindrance and at a point his father also built a house on part of the land for his wife Adzowoa Adzogle.

The plaintiff assert that the defendant's father Kwaku Sedzro Aglawu who hails from Aglawukorpe and not a member of the Wormenor family got married to one Dashie Ahiablie, the plaintiff's Aunt who was granted part of the Wormenor family land upon her request for development purpose.

The plaintiff assert that the defendant's father built on the land granted to Dashie Ahiablie her wife, where they both lived till their demise and the defendant's father was sent to Aglawukorpe for burial.

The plaintiff assert that the place which was granted Dashie Ahiablie was a shrine which belonged to Torgbui Adzogble but after his demise his successor Torgbui Dzoku III together with the plaintiff's Uncle Hudoba Wormenor granted same to Dashie.

The plaintiff assert that the place which was granted to Dashie and later inherited by Kwaku Sedzro Aglawu is distinct from their land but the defendant has encroached upon the land in dispute by commencing a building project on it without the consent or authority of the Wormenor family.

The plaintiff assert that all efforts to stop the defendants from their activities on the land yielded no positive results. Hence this action.

THE CASE OF DEFENDANTS

By a statement of defence filed on 15th December, 2011, the defendant denied the assertion by the plaintiff that the Wormenor family are the lawful owners of the land in dispute and stated further that he inherited the land from his great grandfather Hoshie who was a nephew to Torgbui Dzoku I.

The defendant stated that his grandfather Hoshie was granted that portion of lands by Torgbui Dzoku upon assuming the status of an Agbotadua.

The defendant described their land as bounded as follows;

- a. On one side by the property of Torgbi Dzoku I

- b. On another side by the property of Yakubu Komla
- c. On one other side by the property of Ahiave and
- d. On the last side by the property of Agoha

The defendants denied the genealogy of Torgbui Dzoku as narrated by the plaintiff and stated that Torgbi Dzoku gave birth to Klo, Akpabey, Ahiadzro, Awudi, Tekpor, Torgbui Dzoku II, Adzogble, Adze and Homawu.

The defendants stated that the land in dispute was founded by Torgbui Dzoku I together with his two sisters and gave the Agbotadua to his sister's son Hoshie who inherited the Agbotadua position together with the Afeleme lands.

The defendant stated that Hoshie gave birth to Aglawu, Kpeli, Gakenu and Ahiawortor and Aglawu, the first son of Hoshie gave birth to Sedzro who gave birth to Kwaku Sedzro, the father of the deceased defendant in this suit, Raphael Bokor Sedzro.

The defendant stated that permission was granted to his family to put up the buildings on the land and that, it is rather the plaintiff's Wormanor family who are strangers to Torgbui Dzoku I and were given a place to settle known as Adidogorme where they have lived till today.

The defendant admitted that the plaintiff's father Atsu Wormanor built a temporal structure on the land for his wife Adzowa Adzogble after obtaining permission from the defendant's family but later abandoned the building to collapse because he did not pay anything for the land and also felt uncomfortable living there because he bore false witness against Torgbui Dzoku IV in a matter with Amegble Gbolonyo.

The defendant stated that when the building in question collapsed and the plaintiff's family wanted to rehabilitate it, their action received fierce resistance from the defendant's family.

The defendant stated that he is a descendant of the original founder of the land in dispute and that they are not strangers to the Wormenor family.

The defendant stated that, it was Hoshie who founded another place and named it Aglawukorpe so their staying at Aglawukorpe does not make them strangers.

The defendant stated that the place where he had kept the sand and gravel for the past three years are within their portion of the land and he does not require permission or consent from anyone before doing so.

The defendant assert that the plaintiff is not entitled to his reliefs and that same should be dismissed with punitive cost.

PROCEDURAL HISTORY

The original writ in this suit was issued on 10th November,2011 against Raphael Bokor Sedzro as the defendant.

Per an order of the court the 2nd plaintiff James Kwashie Wormenor was joined to the suit upon the successful grant of his application for joinder.

Following the demise of the defendant, he was substituted by Godwin Sedzro.

The case commenced before His Worship Anthony Abebrese and was later taken over by His Worships Lawrence Buenor Buer, Derrick Pardon Eshun and Her Worship Rejoyce Aseye Gadago.

The proceedings were adopted before me on 22nd March, 2022 and hearing continued with the evidence and examination of the defendant's witness.

ISSUES

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

1. Whether or not the land described by both parties are the same as the land in dispute?
2. Whether or not the land in dispute was solely founded by Torgbui Dzoku I or together with his sisters?
3. Whether or not the Wormenor family are the owners of the land in dispute?

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 it behoves 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”.

In the case of **Mondial Veneer (Gh.) Ltd. v. Amuah Gyebu XV (2011) SCGLR 466**, the Supreme Court in dealing with the burden of proof in respect of declaration of title stated through Georgina Wood C.J as follows;

“In land litigation....the law requires the person asserting title and on whom the burden of persuasion falls to prove the root of title, mode of acquisition and various acts of possession, exercised over the subject matter of litigation. It is only where the party has succeeded in establishing these facts on a balance of probabilities that the party would be entitled to the claim”.

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 plaintiffs gave evidence through the 2nd plaintiff and called one other witness namely David Mawunyo Agbenator (PW1).

The defendants on the other hand testified through the substituted Defendant, Godwin Sedzro and Agbanyo Thomas (DW1).

A locus report of the court dated 21st March, 2012 was also tendered and adopted in evidence.

ANALYSIS

Issue 1- Whether or not the land described by both parties are the same?

In an action for declaration of title and recovery of possession, one of the essential requirements is that, the party seeking declaration must be able to describe the land in dispute.

The position of the law is that, for a person to succeed in his action for declaration of title, recovery of possession and an injunction, he must establish by positive evidence the identity of his land which is the subject matter of the action else his action shall fail for lack of identity. **See the case of Agyei Osaе & Others v. Adjeifio & Others [2007-2008] SCGLR 499.**

In their writ of summons, the plaintiffs described the land as bounded as follows;

- i) On one side by the property of Bokor Sedzro
- ii) On another side by the property of Ahiawortor
- iii) On another side by the property of Agoha and

iv) On the last side by the property of Ahorli

The defendant also gave the boundaries of the land per his description as follows;

- a. On one side by the property of Torgbi Dzoku I
- b. On ANOTHER side by the property of Yakubu Komla
- c. On one other side by the property of Ahiave and
- d. On the last side by the property of Agoha

In **Nortey (No.2) v. African Institute of Journalism and Communications & Others (No. 2) [2013-2014] 1 SCGLR 703**, it was held that one of the instances that will give rise to a locus in quo inspection is when the identity of the land or any physical feature of it is in dispute and which a visit to the land would resolve.

This informed the basis for the court to embark on a locus in quo, which report was subsequently tendered and adopted in evidence. The locus report tendered and adopted by the court, established that both parties were referring to the same land with the description by the plaintiff falling within the boundaries stated by the defendant whose boundaries extended beyond the ones stated by the plaintiffs.

Issue 2: Whether or not the land in dispute was solely founded by Torgbui Dzoku I alone or with his sisters?

In paragraph 5 of their statement of claim, the plaintiffss stated that the land in dispute was part of the lands founded by Torgbui Dzoku I who gave birth to Bortsi.

The plaintiffs stated that Bortsi gave birth to Abede, Abede gave birth to Kumani, Kumani gave birth to Wormenor and Wormenor gave birth to Hudoba Wormenor, Atsu Wormenor and Doe Wormenor with others.

The defendant denied the claim by plaintiffs that Torgbui Dzoku I founded the land alone and stated further that Torgbui Dzoku I founded the land with his two sisters Mama Hude and Hoewornu.

The defendant stated that Torgbui Dzoku I being the chief gave the Agbotadua to his sister's son Hoshie and that Hoshie inherited the Agbotadua together with the Afeleme lands.

The defendant stated further that Hoshie the Agbotadua gave birth to Aglawu, who gave birth to Sedzro who also gave birth to Kwaku and kwaku Sedzro gave birth to Raphael Bokor Sedzro the deceased defendant.

In his evidence for the plaintiffs, the 2nd plaintiff reiterated the claim that the land was founded by Torbgui Dzoku I who was the great grandfather of the plaintiff.

The defendant's own witness Agbanyo Thomas (DW1), also stated in paragraph 5 of his witness statement, that the land was founded by Torgbui Dzoku I. This corroborated the claim by the plaintiffs against the claim by the defendant.

In the case of **Asante v. Bogyabi [1966] GLR** it was held that, *"where the evidence of one party on an issue in a suit is corroborated by witnesses of his opponent, whilst that of his opponent on the same issue stood uncorroborated even by his own witnesses, a court ought not to accept the uncorroborated version in preference to the corroborated one unless for some good reason (which must appear on the face of the judgment) the court found the uncorroborated version incredible or impossible"*. See also the case of **Met Capital Group Limited vs. Guaranty Trust Bank Ghana Ltd. and Linksfield Ridge Reality Ltd. [2021] DLSC10763** at page 6 per Owusu (Ms), JSC.

Issue 3: Whether the Wormenor family are owners of the land in dispute?

It is the case of the plaintiffs that, Dashie Ahiabli a member of their family requested for land from Torgbui Dzoku and Hudoba on which she put up a building and lived with the husband Kwaku Sedzro from Aglawukorpe and they gave birth to the defendant.

The plaintiffs stated that, the defendant is their maternal nephew and that the defendant's father does not hail from Dzodze but from Aglawukorpe which is the reason why when they die they are buried at Aglawukorpe.

In his evidence, the defendant stated that the land in dispute forms part of Aglawu's land which he inherited from his father Hoshie who was given that land by Torgbui Dzoku I.

The defendant stated that upon request by Awutordzi, the mother of Miloso, Miloso was granted a portion of the land on which she built a two-bedroom house and lived with her husband Wormenor.

The assertions by both parties in relation to the respective families, are historical issues that the parties are not in the position to give an eye witness account to.

In the case of **In re Asere Stool: Nikoi Olai Amontia IV (Substituted by Tafo Amon II) V Akotia Oworsika III (Substituted by Laryea Ayiku II) [2005-2006] SCGLR 637**, the court described traditional evidence as follows;

"By its nature, traditional evidence is hearsay evidence. It is evidence of history of events which happened sometime past, concerning a person's pedigree, origin, migration, land, family stool, etc passed on generally by oral tradition from generation to generation".

Faced with the conflicting narrations, the courts often have to make a decision on which of the conflicting versions given by the rival parties should be accepted as most reliable.

In **Abakam Effiana Family v. Mbibado Effiana Family [1959] GLR 326**, the principle was established that, where it appeared that the evidence as to title was mainly traditional in character on each side and there was little to choose between the rival conflicting stories the person on whom the onus of proof rested must fail in the relief being sought for.

The 2nd plaintiff in his evidence on behalf of the plaintiffs described himself as a nephew to both plaintiffs and defendant. The knowledge of the witness on some issues appeared limited because the developments predates him by several years.

The limited knowledge was demonstrated by the witness under cross examination by counsel for the defendant on 23rd May, 2013. Part of the responses of the witness are reproduced as follows;

Q. I am putting it to you that because you and your ancestors are strangers who migrated from Togo you don't know the family history of Torgbui Dzoku I?

A. We are not strangers. We are very much abreast with the history of the family.

Q. Do you know Agbotadua Ahorshie

A. Yes

Q. Who was the mother of the 1st Agbotadua Ahorshie?

A. I don't know her

Q. I am putting it to you that Torgbui Dzoku I daughter gave birth to Agbotadua Ahorshie I?

A. I don't know

Q. Do you know the children of Agbotadua Ahorshie I?

A. No

Q. I am suggesting to you that the children of Agbotadua Ahorshie I were Kpeli, Aglawu and Ahiawortor?

A. I don't know

Q. I am putting it to you that when Agbotadua Ahorshie I was made the stool father of the Dzoku stool, Torgbui Dzoku granted a portion of his founded land to support him?

A. I have never heard it

In paragraph 5 of their statement of claim, the plaintiffs in given the genealogy of Torgbui Dzoku I stated Bortsi as the only child. When that assertion was challenged by counsel for defendant after cross examination, the 2nd plaintiff stated that, he only knows of one son of Torgbui Dzoku I called Bortsi.

Q. How many children did Torgbui Dzoku I have?

A. I only know of one son called Bortsi

Q. I am putting it to you that Torgbui Dzoku begat 5 children. Bortsi was his grandson?

A. I only know of Bortsi to be his son.

Q. Torgbui Dzoku's children were Mama Hude, Klo, Akpabe, Tetteh and Humawu?

A. I don't know

Q. I put it to you that you don't know the genealogy of the Dzoku family because you and 1st plaintiff do not come from the Dzoku family?

A. We are descendants of Dzoku

Q. I am putting it to you that your ancestor Wormenor was a stranger from Togo Akefe who came to live with Torgbui Dzoku I?

A. It is not true. We hail from Dzodze

Q. Which of Dzoku's children gave birth to your ancestor?

A. Those names that you mentioned are not known. The one who gave birth to my ancestor Wormenor is Torgbui Kumani.

Q. I am putting it to you that apart from those five children of Torgbui Dzoku he never had any child called Kumani?

A. Kumani is a grandson of Torgbui Dzoku I

Q.The defendant is from the Aglawu line of Torgbui Dzoku's family?

A.Aglawu is not Torgbui Dzoku's son

The limited knowledge of the witness of the plaintiffs on issues especially relating to the genealogy of the defendant and his relation to Ahorshie makes it difficult for the court to rely on his narrations on whether the defendant's family are descendants of Torgbui Dzoku or strangers as alleged by the plaintiffs.

The defendant's witness who identified himself as the former secretary for Torgbui Dzoku IV and current secretary of Torgbui Dzoku V on the other hand gave evidence in corroboration of the defendant's case to the effect that Torgbui Dzoku I gave portions of the land to Ahorshie which he shared to his children.

Paragraphs 5 to 17 of the witness statement of DW1 is a historical narration of the genealogy of both plaintiffs and the defendant and developments in relation to the land in dispute. The paragraphs are reproduced below;

"5. The land in dispute was founded by Torgbui Dzoku I and the land is situate, lying and being at Dzodze Adagbledu-Afeleme.

6. Torgbui Dzoku I in his lifetime had five (5) children namely Klo, Akpabee, Tette, Homawu and Mama Wudee.

7. Torgbui Abetewu married Mama Wudee the daughter of Torgbui Dzoku I and begat Ahosi and others.

8. *Ahosi the son of Mama Wudee begat Aglawu, Gakenu, Ahiawortor and Kpeli.*

9. *Ahosi became the stool father of Torgbui Dzoku I and was given a piece or parcel of land situate and lying at Dzodze Adagbledu – Afeleme which the disputed land forms part.*

10. *Ahosi the stool father of Torgbui Dzoku shared his land among his children and the portion of land now in dispute was the exact portion that was given to Aglawu the great grandfather of the defendant herein.*

11. *Aglawu the great grandfather of the defendant herein begat the following; Amable, Dzotefe, Kwaku Sedzro and Kwaku Sedzro begat Raphael Sedzro who also begat Godwin Sedzro the defendant herein and others.*

12. *Klo who was one of the Torgbui Dzoku's son begat Adogo and others and Adogo also begat Akumaglo and others.*

13. *After the death of Adogo, Abede who was then a visitor and was residing with Torgbui Dzoku got married to the widow of Adogo and begat Akumani.*

14. *Akumani was from the same mother with Akumaglo but different fathers begat Dzagbana, Wormenor and the plaintiffs herein.*

16. *The plaintiffs only relate to the land in dispute maternally and are currently extending and trespassing over the boundaries of the land given to them by their maternal uncles therefore the plaintiffs are not entitled to the disputed land.*

17. *The defendant is from the direct lineage of Torgbui Dzoku I whiles the plaintiff's great great grandmother only come from the lineage of Torgbui Dzoku and therefore the plaintiff only relate to the land in dispute maternally and not entitled to same per Ewe custom.*

From their pleadings, the plaintiffs insist that the defendant is not connected to the wider family of Torgbui Dzoku I while the defendant denies that and rather questioned the status of plaintiffs as members of the wider Torgbui Dzoku's family.

By virtue of the provisions under section 17(1) of the Evidence Act (NRCD 323) and the principle in the Abakam Effiana Family case (supra), the onus of proof rests on the plaintiff.

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"*.

Considering the historical nature of the issues, the court is of the position that the plaintiffs would have helped their case further, by calling some elders of the wider Torgbui Dzoku family and not only rely on what the 2nd plaintiff stated in evidence which were only repetitions from their pleading.

Effect of the evidence of possession

The principle is that a person in possession and occupation is entitled to the protection of the law against the whole world except the true owner or someone who could prove a better title

In the case of **Summey v. Yohuno [1962] 1 GLR** it was held that, *"in a land case that in a claim for title land where none was able to show title because of want of evidence, or that the*

evidence was confusing and conflicting, the safest guide to determine the rights of the parties was by reference to possession”.

In paragraph 7 of the statement of claim, the plaintiffs stated that for over centuries, their family have been in peaceful occupation, cultivation and possession without any hindrances.

They also stated in paragraph 8 that, as overt acts of ownership, the Wormenor family over the years allowed its family to occupy and also construct their dwelling houses on the land without any opposition from any quarters whatsoever.

The defendant denied the above assertion by the plaintiffs and reiterated the point that, it was upon permission granted by the defendant family that made them put up those properties on the land. The defendant stated that, the property referred to was built by Miloso.

The defendant stated further that, when the said building collapsed and the plaintiff's family wanted to rehabilitate it there was opposition by their family, for which reason the building remained in its state.

In paragraph 16 of the witness statement of the defendant's witness, DW1 stated that the plaintiffs' family were given some land by their maternal uncles but were trying to extend the boundary.

In his evidence in chief to the court on 25th September, 2020 the defendant admitted that the plaintiffs grandmother Miloso was granted a portion of the land by Aglawu and Ahiawortor upon request by one Awutordzi on which Miloso built a two bedroom house and lived with her husband Wormenor.

The court on locus observed the existence of the mud structure and water tank, which the defendant admitted was owned by the plaintiffs' grandmother.

The effect of the admissions by the defendant and his witness and the observations on locus leaves the court in no doubt that the plaintiffs have been in long possession of that portion of the land.

The challenge however was with the extent of the boundaries to which their ownership extends.

Determination of the boundaries of the land?

It is the case of the plaintiffs in their pleadings that, part of the Wormenor land which was granted to Dashie Ahiabile and later inherited by Kweku Sedzro Ahiadzro, father of the defendant, is distinct from the land in dispute and that the defendant has encroached further into portions of their land by commencement of a building project on it without their authority.

The witness for the plaintiffs, PW1 admitted under cross examination that the defendant's family land shares boundary with the plaintiffs' land, but the defendant had trespassed onto the plaintiffs' land.

The following are the responses of PW1 David Mawunyo Agbenator under cross examination on 10th December, 2015;

Q. So the defendant shares a boundary with your grandfather's land/house?

A. Yes

Q. On what side?

A. On the East

Q. How your grandfather and the defendant came to be common boundary owners you would not know?

A. That is so

Q. Your grandfather's land/house do you know all the four boundaries of it?

A. Yes I know the boundaries and those he shares his boundaries with

Q. Who is on the West side?

A. Ahiawvortor

Q. On the North?

A. Agorhar

Q. On the South?

A. Ahorley

Q. So the dispute by your own evidence is on the Eastern side of the land?

A. Yes

Q. So the dispute between your grandfather and the defendant is on the East?

A. That is so

Q. So what is the nature of the dispute?

A. A trespass into my grandfather's house/land putting up a building thereon.

In the case of **Yawson (Substituted by Tulasi) & Another v. Mensah & Mensah [2011] 1 SCGLR 568**, it was held that, *“when a boundary dispute is in issue with an adjoining land, a court of law is bound to ascertain the exact boundaries of the parties. This could be done if the parties had met the surveyor who was enjoined by the order of the court to carry out the survey work. The action being essentially one of a boundary dispute, the trial judge was enjoined to locate the boundaries of the parties through proper admissible evidence on record and give reasons for so believing one side against the other”*.

In an action for declaration of title to land, recovery of possession and injunction, a plaintiff must establish by positive evidence the identity and limits of the land he claims.

Since the plaintiff is seeking a declaration of title to land and other reliefs, he will succeed only if he is able to establish the identity of the land in question satisfactorily according to law so as to entitle him to the reliefs.

The onus of proof required by law as regards the identity of the land would be discharged by meeting the conditions clearly stated in this court's decision in **Tetteh v. Hayford (2012) SCGLR 417** citing the case of **Kwabena v. Atuahene (1981) GLR 136** thus:

- i) *The plaintiff has to establish positively the identity of the land to which he claimed title subject matter of the suit.*
- ii) *Plaintiff also has to establish all his boundaries*
- iii) *Where there is no properly oriented plan drawn to the scale, which made compass bearings vague and uncertain, the court would hold that the plaintiff had not discharged the onus of proof of his title.*

Even though the court stipulates that the requirement to establish the identity of land does not mean mathematical precision or exactness, the stipulation calls for the provision of a proof which demands material witnesses. This is because of the principle in the law of evidence that a party who bears the burden of proof is to produce the required evidence of the facts in issue that have the quality of credibility short of which his claim may fail.

In the case of **Ackah v. Pergah Transport Ltd (2010) SCGLR 731** the supreme court pointed out the various methods of producing evidence which include the testimonies of the party and material witnesses, admissible hearsay, documentary and things (often described as real evidence), without which the party might not succeed to establish the requisite degree of credibility concerning a fact in the mind of the tribunal or court.

In his book, **“Land law, practice and conveyancing in Ghana, 2nd Edition at page 123,** the learned author Justice Dennis Dominic Adjei stated as follows;

“In practice, where a party finds it difficult to prove his boundary he may call a boundary owner to describe either his boundary marks or features with the party whose identity of the land is in dispute and that would assist the party to vividly describe the limits of his land. It becomes more complex where a side of the boundary may have four or five boundary owners and the defendant disputes that the plaintiff does not share boundary with any of them. In such a situation, the

plaintiff in order to prove the limits of his land must call all the boundary owners whose evidence would assist him to positively establish the identity of his land. Where the defendant is not disputing the boundary owners of the plaintiff but his claim is about the limits of the land, it would not be necessary for the plaintiff to call all the boundary owners except the one whose evidence is material in relation to the limit of the disputed land”.

Having enumerated his boundaries to include the boundary owners the plaintiff was bound to fail in an action for declaration of title if he declined to call such owner/s who are material witnesses to testify because the onus was on him to prove his boundaries on the preponderance of probabilities as held in the case of **Owusu v Tabiri (1987-1988) 1 GLR 287**.

CONCLUSION

In the case of **Mondial Veneer (Gh.) Ltd. v. Amuah Gyebu XV** (supra), the Supreme Court in dealing with the burden of proof in respect of declaration of title stated through Georgina Wood C.J as follows;

“In land litigation....the law requires the person asserting title and on whom the burden of persuasion falls to prove the root of title, mode of acquisition and various acts of possession, exercised over the subject matter of litigation. It is only where the party has succeeded in establishing these facts on a balance of probabilities that the party would be entitled to the claim”.

Even though the occupation of a portion of the land by the family of the plaintiffs is not in dispute due to the evidence of possession and admission by the defendants that the area was granted to the grandmother of the plaintiffs, on the balance of probabilities, the plaintiffs were not able to provide sufficient evidence for a determination on the extent of the boundaries claimed by them.

Consequently, the court is unable to grant for a declaration of title and recovery of possession or perpetual injunction to the extent of the boundary being claimed.

The defendant also failed to file a counterclaim so did not have the opportunity to prove his case and therefore title to the disputed land can also not be declared in his favour.

No order as to cost.

(sgd.)

NELSON DELASI AWUKU

MAGISTRATE