

IN THE SUPERIOR COURT OF JUDICATURE IN THE HIGH COURT OF JUSTICE
LAND DIVISION HELD IN ACCRA ON FRIDAY THE 10TH DAY OF JUNE, 2016.
BEFORE HIS LORDSHIP JUSTICE S. H. OCRAN

SUIT NO. FAL 251/13

1. NUMO GEORGE ANKONU ADJIN TETTEY ... PLAINTIFFS
2. JOSHUA ODAIAMA
3. MOSES TAWIAH ARYEE
4. BEN MENSAH ARMAH

VRS.

THE EXECUTIVE SECRETARY, LAND COMMISSION ... DEFENDANT

PARTIES: PLAINTIFFS PRESENT, DEFENDANT ABSENT

COUNSEL: ABSENT

JUDGMENT

On 9th January 2013, the Plaintiffs issued out this writ of summons against the defendant and claimed the following reliefs.

- i. A declaration that the Plaintiffs are the accredited signatories qualified and competent to grants Nii Odai Ntow family land,
- ii. An order compelling Defendant to recognize plaintiffs as the accredited signatories qualified and competent to grant Nii Odai Ntow family land,
- iii. Perpetual Injunction restraining the Defendant from registering grants of Nii Odai Ntow family lands not executed by the Plaintiffs,
- iv. Costs inclusive of legal and administrative costs.

In the statement of claim that accompanied the writ of summons, the plaintiffs described themselves as the heads of the four quarters or branches of the Odai Ntow family and principal elders of the said family. The four quarters or branches of the Odai Ntow family are the Nii Abbey We, Ashong Dzemanwon, Tetteh Afrimie and Anteh Kwakonam . That the 1st Plaintiff is the head of Nii Abbey we, the 2nd Plaintiff, the Head of Ashong Dzemanwon, the 3rd being the head of Tetteh Afrimie and the 4th being the head of Anteh Kwakonam. By the Plaintiffs pleading the Odai Ntow family own lands at Ashongman, Kwabenya, Agbogba among others as held by Agyapong J. in Judgment in the suit

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entitled Peter Mensah Anteh Vrs. Simeon Aryee
 tey G.S. Okine. That the said Judgment provided that for a grant of any of the family land
 to be valid the grant must be made by all the four branches of the family.

That in or around 1986, Nii Aryee Annang without the consent of the other principal
 members of the Odai Ntow family granted part of the Odai Ntow family land to
 Rassbshold Company limited, Ashongman Housing Project in clear violation of the 1980
 judgment. With regard to the Ashongman Housing Project, suit NO 1648/86 entitled
 Aryee Annang Vrs. Ahele Quarshie was instituted. An interlocutory Injunction was
 granted on 11th September 1991. That another Judgment dated 25th November 2011 also
 held that for the grant of any part of Odai Ntow family land to be valid, it must be made
 by all the principal elders of the Odai Ntow family. The defendant has failed and or
 refused to comply or recognize the Judgment in suit Number L554/78, and been
 accepting grants not made by the four branches or quarters of the Odai Ntow family. The
 Plaintiffs also pleaded that they have held series of meetings with the Lands Commission
 and supplied the land commission names and specimen signatures of the persons to
 execute grants from the Odai Ntow family but the Lands Commission has ignored same
 and rather recognized grants made by persons other than the heads of the four branches or
 quarters of the family, and continue to publish such grants for registration. The Plaintiffs
 therefore claims per their writ of summons.

On 31st January 2013, the Executive Secretary entered appearance, but failed to file
 defence. On 9th April 2013 interlocutory Judgment was entered against the Defendant by
 the Court differently constituted. That judgment was set aside on 7th June 2013. The
 defendant was granted leave to file defence within one week from that date.

On 17th June 2013, the Defendant filed defence but filed amended statement of defence
 on 10th July 2013 as reply had then not been filed.

In the Defendants Defence almost all the factual matters, including the claim by the
 plaintiffs as head of the branch families were denied. The defendant also pleaded that the
 proper person to grant family land is the head of family with the consent of the principal
 members of the family. The defendant pleaded further that the Agyapong's judgment has
 been misconstrued to mean that the judgment dispensed with the position of head of
 family. That the defendant also pleaded that the accrued or existing interest in the said
 land cannot be expunged from the records of the lands commission "so long as same has
 been properly vested in the owners therein indefensible title without more".

The Plaintiffs *filed a reply to the* defence and pleaded that the 1980 judgment had been
 plotted at the Lands Commission, Accra and the Defendant cannot feign ignorance of the
 said Judgment. The reply also stated that a copy of the Judgment entitled Numo George
 Ankonu Adjinn Tettey vrs. Nii Aryee Annang (substituted by Charles Armah Ceylon) and

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7 others which ordered that grants made to the 2nd to the 7th. Defendants in that suit, were made available to the Defendants but the defendant had in clear disrespect and in contempt of the court failed and or refused to expunge from its records the plotting in favour of the 2nd to 7th Defendants.

On 18th December 2013, the following issues were set down for determination

- i) Whether or not the Odai Ntow Family is the owner of Lands at Kwabenya, Ashongman and Agbogba.
- ii) Whether or not the Odai Ntow Family situate at Kwabenya, Ashongman and Agbogba has been plotted in the records of the Lands Commission,
- iii) Whether the Judgment dated 30th January 1980 in suit entitled Peter Mensah Anteh vrs. Simeon G.S Okine and other in suit NO. 554/78 together with the said judgment plan have been plotted in the records of the Lands Commission,
- iv) Whether the Plaintiffs have capacity to alienate Odai Ntow family Lands
- v) Whether Plaintiffs are entitled to their claim
- vi) Any other issue raised by the pleadings

As hearing had not commenced as at 5th March 2015 when C.I 87 came into force, the Plaintiffs were ordered to file their witness statements on 15th July 2015, by 28th August 2015 the vacation notwithstanding. The defendant was also ordered to file its witness statement upon the service of the Plaintiffs witness statement on it. The suit was then adjourned to 15th October 2015.

On 28th October 2015, the suit came on and it was stated that "Defendant has been served with the Plaintiffs witness statement. The Defendant should therefore file its witness statement by 27th November 2015. It was also ordered that the proceedings of 28th October 2015 be served on the defendant. The suit was then adjourned to 2nd December 2015. There is proof of service on the docket to the effect that on 18th November 2015, a copy of court order was served on the Defendant, through one Godwin at the legal department.

On 2nd December 2015, the defendant was absent in court and the proof of service of the courts order which is now on the docket was then not on the docket. So the suit was adjourned to 11th January 2016. Hearing notice was ordered to be served on the defendant. As at 28th January 2016, the defendant has not filed its witness statement. The plaintiff therefore ordered to file their pre trial check list for the pretrial review conference to be taken.

On 16th February 2016, when the suit was called it was noticed that the plaintiffs pretrial check list and a hearing notice had been filed and served. The suit was then adjourned to 17th March 2016 for pretrial review conference. A hearing notice was ordered to be served on the defendant. On 17th March 2016, Mr. Alex Attuah Ntow represented the

Defendant and Mr. James Mensah Kulley represented the Plaintiffs for the Pretrial Review conference. The 2nd and 4th Plaintiffs were present and Mr. John Kpodoo Xida represented the defendant.

The pretrial review conference was commenced. The Plaintiffs exhibits, up to Exhibit "G" were considered and admitted. The Pretrial Review Conference was then adjourned to 4th April 2016, the defendant and its counsel were absent in court. Since the Defendants representative and counsel were in court on 17th March 2016, when the pretrial review conference was commenced and adjourned to 4th April 2016, the court continued with the pretrial Review Conference on 4th April 2016, and allowed the Plaintiffs counsel to tender the other exhibits of plaintiffs.

Thereafter the suit was adjourned to 27th, 28th and 29th April 2016 for hearing at 11 a.m on each day. A hearing notice was ordered to be served on the Defendant.

On 27th April 2016, there was proof of service on the docket to the effect that the defendant was served on 22nd April 2016. The defendant and its counsel were absent. The Plaintiffs were called to lead evidence. The 1st, 2nd, 3rd and 4th Plaintiffs led evidence and relied on their witness statements and the exhibits which were attached to the witness statement and had been admitted. As the defendants counsel failed to attend court, so as to cross-examine the Plaintiffs, they were discharged, after they had given evidence.

The Plaintiffs evidence is that they are the heads of the various branches of the family, the 1st being the Nii Abbey-we, 2nd Plaintiff being the head of Ashong Dzemanwon, the 3rd being the head of Tetteh Afrimie branch and the 4th being head of Anteh Kwakonam branch, but the Defendant has failed and or refused to recognize them as the heads of the various branches of the family, and the person competent to grant the Odai Ntow Family land. Even though the Defendant did not lead evidence it filed an amended defence and stated that it was not privy to the Agyepong Judgment in suit number 554/78, but insisted that it is the head of family, with the consent of the principal members of the family who ought to grant Odai Ntow Family Land.

The Plaintiffs tendered Exhibit 'A' which is the Agyapong judgment dated 30th January 1980 and Exhibits B, B1 and B2 which are letters from Lands Commission inviting Nii Abbey Family, Nii Ashong Djemanwon family and the Anteh Family to a meeting in respect of Judgment in respect of Lands belonging to the Odai Ntow Family. This exhibit B is dated 24th June 2004 Exhibit B1 is a letter from Lands Commission dated 28th September 2004 to the four branches asking them to attend another meeting with lands, as a result of a letter written by Jean Maorellet on behalf of the family. Then there is Exhibit B2 which is minutes of a meeting dated 5th October 2004. From Exhibit B2 which is the minutes of meeting of the Regional Officers of lands and the larger Odai Ntow Family it can be said that the Judgment of Agyapong J. had been made available to

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the Lands Commission, and the Commission wanted to know the representatives of the various branches of the family and their specimen signatures. It is therefore not true that Lands Commission is not aware of the Judgment of Agyapong J.

Reading the Judgment of Agyapong J. It is found that the stand taken by counsel for the Defendant that there must be an overall head of family, who should grant portions of the land, with the consent and concurrence of the principal members of the family is unfounded. It is true that nothing stops the four branches of the family from appointing a general head, but it is not mandatory that a general head should be appointed, especially as from exhibit 'A' the four branches included the decendants of an adopted daughter of Odai Ntow and an adopted Son of Ashong Dzenawong who was one of the three Sons of Odai Ntow the originator of the Odai Ntow family. The history of the family is such that it may be very difficult to place all of them under a general head of family. This may account for the conclusion in the 1980 Agyapong Judgment that the heads or a principal member from all the four branches of the Odai Ntow family should execute a lease on a portion of Odai Ntow family land to make it valid. The different branches accepted this arrangement, and the outcome is as contained in Exhibit B2 which meeting was called by the Regional Lands Officer as contained in Exhibit 'B1'

Exhibit 'A' being a judgment of a court of competent Jurisdiction, and the parties having accepted same defence counsel cannot insist that the four branches should have a general head of family. What is important is that the plaintiffs who have described themselves as heads of the four branches of the Odai Ntow family are indeed the heads of the four branches.

The Plaintiffs gave evidence in their witness statements that they are the heads of the four branches of the family, and tendered Exhibit 'G'. The Plaintiffs witness statements had been served on the Defendant with Exhibit "G". The defendant did not file any evidence in rebuttal to the evidence of the Plaintiffs. They have also not cross examined the Plaintiffs on their evidence. Since the defendant did not take advantage of the hearing notice served on it to cross examine the Plaintiffs, on their witness statement, I accept the Plaintiff evidence and hold that the Plaintiffs have the Capacity to alienate Odai Ntow Family Lands as heads or representatives of the four branches of the said family, acting together.

The issue of whether the Odai Ntow family is the owner of lands at Kwabenya Ashongman and Agbogba does not arise in this suit as the defendant is not challenging the Odai Ntow family that it does not own land at Kwabenya, Ashongman and Agbogba. What is important is for the defendant to accept and process Indenture executed by the Plaintiffs on portions of Odai Ntow family land at places where the said family own land.

I therefore enter Judgment for the Plaintiffs as follows:

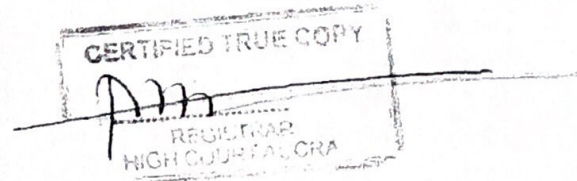
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- a) That the Plaintiffs are the accredited signatories qualified and competent to grant Nii Odai Ntow family lands as the representatives of the four branches of the Odai Ntow Family as long as they remain the accredited representative of the various branches.
- b) That the defendant its agents, servants, etc are restrained from registering grants of Nii Odai Ntow family Lands not executed by the Plaintiffs.

The Plaintiffs are awarded cost of GHC5,000.00 against the defendant.

(SGD)
JUSTICE S. H. Ocran
JUSTICE OF THE
HIGH COURT



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