**[1960] HC LEXKIMA 0000**

ADJABENG v. KWABLA

IN THE HIGH COURT (LANDS DIVISION), ACCRA

16TH MARCH, 1960.

OLLENNU, J.

# CASE SUMMARY

# OUTCOME

# AREAS

Land

Discretion of the Court

# ISSUES

# Whether or not the Plaintiff helping his father purchase the land in dispute makes him a joint-owner?

# Whether or not the Native Court was wrong in refusing to grant a further adjournment despite the Adidome/Tongu Hospital submitting a medical report on behalf of the Defendant?

# HEADNOTES

HN1 [Authorities cited:Regulation 24 of the Native Courts (Colony), *Okwabi v. Adonu*, *Quartey v Martey and Another*, *Abbey and Another, Thompson v Mensah*]  
HN2 [Authorities cited;]

# CASES CITED

1. *Okwabi v. Adonu* 2 W.A.L.R. 268.
2. *Quartey v. Martey and Another* [1959] G.L.R. 377.
3. *Abbey and Another v. Ollennu* 14 W.A.C.A. 567.
4. *Thompson v. Mensah* 3 W.A.L.R. 240.

## COUNSEL

## *Puplampu* (for Lassey) for Defendant-Appellant.

*Asante* for Plaintiff-Respondent.

**JUDGMENT**

## OLLENNU, J.

## [1] This is an appeal from a judgment of the West Akim Abuakwa Local Court, Division “2”, sitting at Asamankese. The respondent, who was the plaintiff in the native court, claimed:- (1) declaration of title, (2) damages for trespass, and (3) injunction in respect of a piece of land situate at Asiase near Asamankese; the land is fully described in the writ of summons. The grounds for his claim are that the land was the self-acquired property of his father, one Benjamin Kwame Ofori Adjabeng of Somanya, now deceased, and that he (plaintiff) has succeeded to it. Opposing this claim, the defendant contended that he purchased this land from the plaintiff’s said father about 13 years ago, and that he has remained in possession as owner thereof ever since.

[2] To succeed in his claim the plaintiff must establish two facts; if he fails in either of them his claim ought to be dismissed. The two things which he must establish are:-

1. that his father was owner in possession of the land at the date of his death, *and either*
2. that he is the head of his father’s family, or
3. that he has been properly appointed successor to his father by the head and principal members of his father’s family.

[3] Before the merits of the case are dealt with, it is necessary to dispose of an important procedural matter. During the course of his evidence the defendant said that the plaintiff’s father executed a deed of conveyance in his favour to evidence the sale of the land to him (the defendant) and that he had left the document in his home town, and wanted an adjournment to enable him to produce it. The native court accordingly granted the adjournment. The defendant, however, failed to appear on the adjourned date, but the native court received a letter from the chief clerk of the Adidome/Tongu Hospital, forwarding a medical certificate issued by the doctor in charge of that hospital certifying that the defendant was ill, had been admitted to hospital and could not attend court that day. Thereupon the native court adjourned the case to another date.

[4] On that date also another certificate of the doctor in charge of the hospital was received by the native court stating that the defendant was still a patient in the hospital and could not attend court. In spite of this medical certificate, the native court refused to grant a further adjournment, stating that they must finish the case before November 23, 1959; apparently they knew that their court would cease to exist on that day as the Local Courts Act, 1958, was to come into effect in the whole of the Eastern Region on that day. They therefore proceeded to give judgment in favour of the plaintiff for the declaration of his title to the land as prayed for by him in his writ of summons.

[5] Regulation 24 of the Native Courts (Colony) Regulations gives the native court a discretion to grant an adjournment in a case at the request of a party if good reason is shown for the application. In this case it is quite clear that the medical certificate produced on behalf of the defendant was good reason upon which the native court should have granted the adjournment sought; their refusal to grant a further adjournment in such circumstances is therefore not a proper exercise of the discretion given to them in the said regulation 24. This wrongful exercise of their discretion has occasioned a grave miscarriage of justice. Consequently, if there had not been sufficient evidence on the record which disposes of the appeal on its merits, this would have been a proper case in which this court should exercise the discretion given to it under section 50 of the Native Courts (Southern Ghana) Ordinance to allow the appeal, to set aside the judgment and to remit the case to the native trial-court or its successor for trial *de novo.* But that is unnecessary in view of the facts on the record.

[6] As pointed out earlier, the plaintiff cannot succeed unless he is able to show by positive evidence that his father, through whom he claims, was in possession of the land as owner thereof at the date of his death. In the evidence led by the plaintiff himself, as well as in that given by each of his two witnesses (his uncle and younger brother respectively) the plaintiff proved that the land in dispute was purchased by his father, the late Benjamin Kwame Ofori Adjabeng, in the year 1939 for an amount of £45, of which £15 was an amount with which the plaintiff assisted him to make up the purchase price; that sometime ago the father sold this land to the defendant for an amount of £40; that the fact of the sale came to the plaintiff’s knowledge in 1949 when his brother (a witness) told him of it. Plaintiff said that he immediately requested his father to allow him to go to the purchaser of the land to redeem it, but the father refused, telling him that he had sold the land outright and it could not be redeemed. In his own words he said:

“I then requested my father to show me the purchaser in order that I should refund to him the purchase price. My father told me that he had sold the land outright.”

[7] The plaintiff’s younger brother said that after he had been away from home for some time, he returned about ten years ago, which would be about 1949, and wanted to go and work on this land, but his father told him that he should not go upon that land any longer because he had sold it. This fact of the sale of the land to the defendant was further confirmed by the plaintiff’s uncle who said that his brother himself told him that he had sold the land to a person called Tettey Kwabla - the defendant.

[8] According to the plaintiff himself, his father lived until 1957, dying on May 24, in that year. The plaintiff never at any time during all that time challenged his father’s right to sell the land, and neither he nor any member of his father’s family took any steps to have the sale of the land by his father set aside on the ground that the same was invalid because they had not been witnesses to it.

[9] Far from establishing, then, that the plaintiff’s deceased father was owner in possession of the land at the date of his death, the evidence led by the plaintiff and his witnesses established positively the plea of defendant that his father had, over ten years before his death, divested himself of all right, title, and interest he had in the land in dispute, and was not and could not have been the owner in possession of it at the date of his death.

[10] Upon that evidence the native court, at the close of the plaintiff’s case, should have considered whether he had made out a case for the defendant to answer, as such courts are required to do by

regulation 21 of the Native Courts (Colony) Regulations. If they had done so, they must have come to the conclusion that the plaintiff had failed to make out a case, and that judgment should be entered for the defendant (as provided in the said regulation 21) without calling upon him for his defence. Further, the defendant having gone into the witness box and given clear and definite evidence of the alienation of the land to him by the plaintiff’s father, the native court had no excuse for failing to dismiss the plaintiff’s claim, and for not entering judgment for the defendant. Curiously enough, instead of discharging the duty which the law had laid upon them, they went out of their way to enter judgment for the plaintiff.

[11] It has been submitted by counsel for the respondent that the judgment of the native court is right on the grounds that the sale of the land by the plaintiff’s father to the defendant was null and void, because it was not witnessed by members of the vendor’s family. There is no substance in this submission. By customary law a person is entitled to alienate his self-acquired property by way of sale or gift without the necessity of members of his family concurring in it. It is otherwise if the property be family property. For the protection of purchasers, a purchaser or donee who acquires property from an individual owner, himself may require members of his said vendor’s or donor’s family to witness the alienation by the vendor or donor to him to ensure that he was not acquiring something which is family property, but he is not obliged to require such attestation. All that customary law requires (to make an alienation of self-acquired property valid) is publicity. In this case the plaintiff and members of his family proved that the plaintiff’s father sufficiently published to members of his family and other persons that he had alienated this land; and not a single one of them raised any objection to the sale. That being the case the submission that the sale was invalid is not maintainable.

[12] Again, it was submitted by learned counsel for the respondent that the consideration for the sale (namely, the purchase price of £40) was inadequate, and that the inadequacy vitiated the sale, because the land was worth about £200. Asked to give any authority to support this proposition that a sale would be invalid for insufficiency of consideration, counsel admitted that he could not give one. Certainly, in the absence of fraud or misrepresentation, inadequacy of consideration cannot be a ground for avoiding a sale validly made.

[13] I now turn to the text of the judgment of the native court. It is important to note the grounds upon which that judgment is based. The relevant portions are as follows:—

“The plaintiff in this case alleged that he had contributed cash £15 to his father towards the purchase of the land . . . From the evidence on record this Court is satisfied that the plaintiff is joint-owner of the land in dispute with his late father, and that the deceased father had no right to sell the land without the knowledge and consent of the plaintiff, who contributed cash £15 towards the purchase price of the land.”

[14] In the first place the plaintiff never alleged that he made a contribution to the purchase price of the land. What he did say was that he had assisted his father with an amount of £15. In fairness to the plaintiff it should be said that he never claimed that by reason of the financial assistance he gave to his father he became joint-owner with his father of the land so purchased. But, even if the native court used the word “contributed” in the sense of “assisted”, their decision that the financial assistance to the father made the plaintiff joint-owner of the land with his father is against customary law. By customary law, where a son or a ward works with his father or guardian and out of the proceeds of that joint labour the father or guardian acquired property, the son or ward does not become joint-owner of that property, with the father or guardian (see *Okwabi v. Adonu* (2 W.A.L.R. 268) and *Quartey v. Martey and Another* [1959] G.L.R. 377). Similarly, by customary law where a son or a ward assists his father or guardian with money and the father or guardian uses that money, or that money together with other monies of his own, to acquire property, the son or ward does not become joint-owner with the father or guardian of the property so acquired. The native court was therefore clearly in error in holding that the plaintiff became joint-owner of the property with his father by reason of the financial assistance which he had given the father.

[15] One point more. Even if the evidence had been that the plaintiff contributed £15 towards the purchase of the land in order that he should become joint-owner of the property with his father, he, having stood by and done nothing for eight or more years, with full knowledge that the father had completely alienated the whole of that property, and having allowed the defendant to occupy that farm, spend his labour and money to improve it in the honest belief that he had acquired good title to it, the plaintiff would not be allowed by customary law now to claim ownership of that land, or now to contend that his father was not competent to make a valid alienation of that land. So, too, equity will hold the plaintiff estopped by his laches (which otherwise would amount to fraud) from now urging that the sale of the land by his father was null and void, and that he is entitled to recover possession—see the case of *Abbey and Another v. Ollennu* (14 W.A.C.A. 567), and see also the judgment of the Court of Appeal in the case *Thompson v. Mensah* (3 W.A.L.R. 240).

[16] Thus, from whatever angle this case is looked at the appeal is bound to succeed. It is therefore allowed, and the judgment of the native court is set aside, including the order as to costs. Any costs paid should be refunded. For that judgment there is hereby substituted the following: The plaintiff’s claim is dismissed, and judgment entered for the defendant.