

IN THE CIRCUIT COURT HELD AT KUMASI (KMA) ON WEDNESDAY THE 27<sup>TH</sup> DAY OF NOVEMBER 2024 BEFORE HIS LORDSHIP ABUDL-RAZAK MUSAH ESQ. JUSTICE OF THE HIGH COURT SITTING AS AN ADDITIONAL CIRCUIT JUDGE.

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SUIT NO: A1/73/2023

ABUSUAPANYIN ODENEHO ODEHYEE  
NANABA KWABENA BADU (SUING AS  
THE HEAD OF FAMILY OF HUAHI ACHAMA  
TUTUWAA ROYAL FAMILY OF  
BENIMASI-BOADI)  
PER HIS LAWFUL ATTORNEY  
NANA KWESI OSEI BONSU

PLAINTIFF

VS

1. NANA KWAME ADU  
OF EMINA – KUMASI  
2. MR. WOBIL  
OF ATONSU – KUMASI

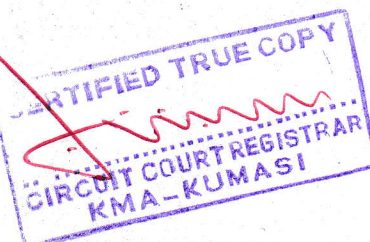
DEFENDANTS

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## JUDGMENT

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1. Per the amended writ filed on the 11<sup>th</sup> August 2023, the Plaintiff Abusuapanyin Odeneho Odehyee Nanaba Kwabena Badu, per his lawful attorney, Nana Kwesi Osei Bonsu, instituted this action against the Defendants for the following reliefs:



- a) A declaration that Oheneyere Yaa Huahi Achama Tutuwaa is the owner of all that piece or parcel of land situate and lying at Benimasi-Boadi Kumasi, Ashanti Region described in history as a gift granted by Asantehene Osei Tutu I to his wife Oheneyere Yaa Huahi Achama Tutuwaa to have absolutely generations ago and more particularly described by a site plan of which have been prepared by a licensed surveyor, Anthony Ackah, approved by the Director of Survey on 18<sup>th</sup> December 2020 bearing Regional Number SGA/A296/2019 and duly marked LVD/FC/ASR/3013/2021.
- b) A declaration that the Plaintiff is the head of family of Huahi Achama Tutuwaa Royal Family of Benimasi-Boadi and has the capacity to deal with or alienate or deal with Oheneyere Yaa Huahi Achama Tutuwaa Royal Family Lands with the consent and concurrence of the principal members of Principal members being: Obaapanin Abena Ataa Birago a.k.a Sarah Ibrahim Bonsu, Samuel Opoku, Nana Kwesi Osei Bonsu, Erica Konadu Adutwumwaa, Obaapanin Adwoa Yeboah a.k.a Sakina Donkor, Obaapanin Akua Asamoah, Obaapanin Akosua Achiaa a.k.a Mary Donkor, Ama Amankwa, Obaapanin Nana Yaa Pokuaa, Benjamin Ababio and Afia Amoah.
- c) A Declaration that 1st Defendant has no capacity whatsoever to alienate or deal with any portion of the Oheneyere Huahi Achama Tutuwaa Royal Family Lands.

- d) *Declaration that any sale or purported Sale of any portion or portions of Oheneyere Huahi Achama Tutuwaa Royal Family Lands by 1<sup>st</sup> Defendant or any person, persons or institutions claiming through him is null and void.*
- e) *Perpetual injunction restraining 1<sup>st</sup> Defendant, his agents, servant, Privies assigns or any person or persons who might claim title through him or for him from interfering with the interest of Huahi Family Lands.*
- f) *Order for recovery of possession.*
- g) *Such further or other reliefs that the Honourable court may seem fit to make.*

2. Per his pleadings, the Plaintiff claimed that he was entitled to the reliefs stated supra because his maternal ancestor, Oheneyere Yaa Huahi Achama Tutuwaa acquired all lands situate and Benimase-Boadi by way of gift from her husband, Otumfour Osei Tutu I, the Plaintiff's family have been in possession and occupation of the land for centuries without any interference from any person or institution either public or private. They had leased portions of the land to other persons as a show of their possessory rights over the land.
3. According to the Plaintiff, the 1<sup>st</sup> Defendant who has styled himself as Caretaker Chief of Benimasi-Boadi, even though no such position exists recently trespassed onto over 300 acres of the Plaintiff's family

land, laying adverse claim to same and selling a portion of the land to the 2<sup>nd</sup> Defendant who has since commenced construction on same.

4. The Plaintiff therefore instituted this action to restrain the 1<sup>st</sup> Defendant from carrying out the alienation of the land in dispute to the detriment of the Oheneyere Yaa Huahi Achama Tutuwaa family.
5. The 1<sup>st</sup> Defendant, throughout the course of this action, neither entered appearance nor filed a defence in respect of this action. The 2<sup>nd</sup> Defendant, on the other hand, entered appearance by himself and filed a statement of defence.
6. The 2<sup>nd</sup> Defendant's case is that, he met with the 1<sup>st</sup> Defendant who had described himself as the Caretaker, Chief and brother to the late Abusuapanin Kwame Konadu Yiadom of the Oheneyere Yaa Huahi Achama Tutuwaa Royal Family of Benimasi-Boadi and therefore had the authority to deal with the land.
7. The 2<sup>nd</sup> Defendant stated that upon the representations made by the 1<sup>st</sup> Defendant, he entered into a contract of sale, including the payment of substantial amounts of money as commitment and entry fees to the 1<sup>st</sup> Defendant, however contract of sale was yet to be concluded.
8. He pleaded that though he had not conducted any search to confirm the capacity of his grantor, the 1<sup>st</sup> Defendant, he was of the belief that he was indeed a caretaker chief of the Oheneyere Yaa Huahi Achama Tutuwaa Royal Family of Benimasi-Boadi.

9. Finally, he pleaded that he was a bonafide purchaser for value without notice and thus the Plaintiff was not entitled to his claim.

### **BURDEN OF PROOF**

10. *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.*”
11. **Section 12 (1)** also provides that: “*Except as otherwise provided by law, the burden of persuasion requires proof by a preponderance of the probabilities.*”
12. 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.
13. In the case of *Ackah Pergah Transport Ltd. & Others* (2010) SCGLR 728 at 736, *Her Ladyship Adinyira JSC* stated: “*It is a basic principle of 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 has the quality of credibility short of*

which his claim may fail. It is trite law that matters that are capable of proof must be proved by producing sufficient evidence so that on all the evidence a reasonable mind could conclude that the existence of a fact is more probable than its non-existence. Section 10 (1) (2) and 11 (1) (4) of the Evidence Act, 1975 NRCD 323."

14. Following and applying the above standard of proof I shall proceed to examine the evidence on record and resolve the above issues to arrive at a decision on the reliefs claimed by the Plaintiff and the Defendant.
15. Regardless of serving the Defendants with the hearing notices under the rules, the Defendants continued to stay away from the proceedings. The Court therefore proceeded under *Order 36 Rule 1(2) (a) of the High Court Civil Procedure Rules (CI 47)* and allowed the Plaintiff to prove his claim, the absence of the Defendants notwithstanding.
16. Ordinarily, where a Court has taken a decision without due regard to a party who was absent at a trial because he was unaware of the hearing date that decision is a nullity for lack of jurisdiction on the part of the court. However, where the party affected was sufficiently aware of the hearing date or was sufficiently offered the opportunity to appear but he refused or failed to avail himself the Court was entitled to proceed and to determine the case on the basis of the evidence adduced at the trial.

## ISSUES

17. The issues germane to the resolution of this action are:
1. *Whether or not Oheneyere Yaa Huahi Achama Tutuwaa Family is the owner of all that piece or parcel of land situate and lying at Benimasi-Boadi.*
  2. *Whether or not the Plaintiff is the head of family of the Oheneyere Yaa Huahi Achama Tutuwaa Royal Family.*

## FIRST ISSUE

18. First, whether or not Oheneyere Yaa Huahi Achama Tutuwaa is the owner of all that piece or parcel of land situate and lying at Benimasi-Boadi:
19. In the case of *Dr. R. S. D. Tei & Anor vs Messr Ceiba International [2008]* the Court speaking through G. Pwamang JSC stated that: "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."
20. Now, having regard to the fact that the Defendant did not avail himself to defend his right if any against the Plaintiff, indeed, there is

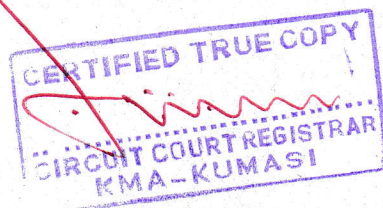
overwhelming uncontroverted evidence on record to support the finding that Oheneyere Yaa Huahi Achama Tutuwaa acquired all lands situate and Benimase-Boadi by way of gift from her husband, Otumfour Osei Tutu I.

21. The gift, according to the Plaintiff, was granted under customary law and was offered by Otumfour Osei Tutu I to Oheneyere Yaa Huahi Achama Tutuwaa, his wife, with the consent and concurrence of Nana Osei Boa (biological brother of the Donor) and Nana Essen Boadi (Nseniehene) as Elders of the Golden Stool. The other persons present were the Donee's mother Obie, and her siblings Kofi Kusi, Twum and Odwira. The Donee through her brother Koti Kusi presented palm wine signifying acceptance of the gift. This was admitted in evidence without challenge.
22. It is in evidence undisputed that the Plaintiff's family have been in undisturbed possession and control of the lands granted to their matriarch, Oheneyere Yaa Huahi Achama Tutuwaa for centuries and that the Plaintiff's family have even leased portions of the subject matter in dispute to other persons.
23. The Plaintiff's family have also registered their interest in the subject matter at the Lands Commission duly paying the statutory fees required for registration and publication (Exhibits E and F).

24. A search result from the Lands Commission, Kumasi indicates that the subject matter was adjudged by the High Court (Land Division), Kumasi as belonging to the Huahi Achama Tutuwaa Royal Family of Boadi. There is no evidence on record that this judgment has been set aside or even challenged in any way. The judgment thus, remains in force as proof of the Plaintiff's family claim to the subject matter.
25. From the search, the interest of the Plaintiff's family in the subject matter is unencumbered, substantiating the Plaintiff's claim that the land has neither been compulsorily acquired nor the subject of a lease granted to the Kwame Nkrumah University of Science and Technology.
26. In my candid opinion, the Plaintiff has adduced enough evidence to point to the ownership of the subject matter by Oheneyere Yaa Huahi Achama Tutuwaa.
27. I so hold and declare that the Oheneyere Yaa Huahi Achama Tutuwaa is the owner of all that piece or parcel of land situate and lying at Benimasi-Boadi.
28. I therefore resolve the first issue in favour of the Plaintiff.

## SECOND ISSUE

29. On the issue of whether or not the Plaintiff is the head of the Oheneyere Yaa Huahi Achama Tutuwaa Royal Family of Benimase-



Boadi, there is uncontroverted evidence that per the Constitution of the Oheneyere Yaa Huahi Achama Tutuwaa (Exhibit G), particularly Schedule 2, the Plaintiff, Abusuapanyin Odeneho Odeneho Odehye Nanaba Kwabena Badu, is named as the Head of Family:

30. This was not rebutted by either Defendant except that the 2<sup>nd</sup> Defendant in his Statement of Defence stated that he was not in a position to admit or deny the capacity of the Plaintiff.
31. I, therefore resolve this issue in favour of the Plaintiff.
32. I so hold that Abusuapanyin Odeneho Odeneho Odehye Nanaba Kwabena Badu is the head of the Oheneyere Yaa Huahi Achama Tutuwaa Royal Family of Benimase-Boadi.
33. Having resolved that the Plaintiff is the head of family, it therefore means that the 1<sup>st</sup> Defendant is not the head of family and as such has no capacity to alienate land belonging to the Oheneyere Yaa Huahi Achama Tutuwaa Royal Family. It must also be noted that Exhibit G also makes no mention of a Caretaker family. From the evidence on record, there is no such role that exists per customs and traditions of the Oheneyere Yaa Huahi Achama Tutuwaa Royal Family. The 1<sup>st</sup> Defendant cannot, therefore, style himself as such.

### **CONCLUSION**

34. On the totality of the evidence adduced in this action, I hereby enter judgment in favour of the Plaintiff as follows:

- a) A declaration that Oheneyere Yaa Huahi Achama Tutuwaa is the owner of all that piece or parcel of land situate and lying at Benimasi-Boadi Kumasi, Ashanti Region described in history as a gift granted by Asantehene Osei Tutu I to his wife Oheneyere Yaa Huahi Achama Tutuwaa to have absolutely generations ago and more particularly described by a site plan (Exhibit E).
- b) A declaration that the Plaintiff is the head of family of Huahi Achama Tutuwaa Royal Family of Benimasi-Boadi and has the capacity to deal with or alienate or deal with Oheneyere Yaa Huahi Achama Tutuwaa Royal Family Lands with the consent and concurrence of the principal members of Principal members being: Obaapanin Abena Ataa Birago a.k.a. Sarah Ibrahim Bonsu, Samuel Opoku, Nana Kwesi Osei Bonsu, Erica Konadu Adutwumwaa, Obaapanin Adwoa Yeboah a.k.a Sakina Donkor, Obaapanin Akua Asamoah, Obaapanin Akosua Achiaa a.k.a Mary Donkor, Ama Amankwa, Obaapanin Nana Yaa Pokuaa, Benjamin Ababio and Afia Amoah.
- c) A Declaration that 1<sup>st</sup> Defendant has no capacity whatsoever to alienate or deal with any portion of the Oheneyere Huahi Achama Tutuwaa Royal Family Lands.
- d) Declaration that any sale or purported Sale of any portion or portions of Oheneyere Huahi Achama Tutuwaa Royal Family Lands by 1<sup>st</sup>

Defendant or any person, persons or institutions claiming through him is null and void.

- e) Perpetual injunction restraining 1 Defendant, his agents, servant, Privies assigns or any person or persons who might claim title through him or for him from interfering with the interest of Huahi Family Lands.
- f) Recovery of possession.
- g) Cost of GHS 5,000.00 against the Defendants.

(SGD)

H/L ABDUL RAZAK MUSAH  
JUSTICE OF THE HIGH COURT SITTING  
AS AN ADDITIONAL CIRCUIT JUDGE

COUNSEL

YAW ATTAKORA FOR THE PLAINTIFF

