

IN THE CIRCUIT COURT OF GHANA HELD IN ACCRA ON FRIDAY, THE 28TH
DAY OF OCTOBER, 2022 BEFORE HER HONOUR ROSEMARY BAAH TOSU
(MRS) – CIRCUIT COURT JUDGE

SUIT NO: C4/12/2022

FAUSTINA DOKU **==** **PLAINTIFF/ APPLICANT**
(SUING PER HER LAWFUL ATTORNEY)
EMMANUEL MC-ARTHUR
HSE/NO B 697/23
NEW FADAMA
ACCRA

VS

1. KATE FRIMPONG MANSO **==** **DEFENDANTS/ RESPONDENTS**
2. DORA AMOAKO
(ALL OF HSE/ NO B 697/23
NEW FADAMA, ACCRA).

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RULING
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Plaintiff issued a Writ of Summons and Statement of Claim from the Registry of this Court against the two Defendants herein seeking the following reliefs

- a. An order of eviction against the Defendants*
- b. Recovery of possession in respect of the disputed property in favour of Plaintiff*
- c. An order directed at the Defendants to pay their respective rent arrears on the disputed property from the year 2011 till date.*
- d. Payment of interest on the said rent arrears at the prevailing commercial bank rate*
- e. Costs including legal costs*
- f. Any other orders that the Honourable Court may deem fit to make in the circumstances.*

Defendants were served by substitution and entered conditional appearance to the Writ of Summons and Statement of Claim.

Following Defendant's refusal or inability to file a Statement of Defence as required by the Rules of Court, Plaintiff filed a motion for interlocutory judgment in default of Defence under Order 13 rule 5 of the High Court (Civil Procedure) Rules, C.I.47.

Defendants are opposed to the grant of this application by Plaintiff.

Brief facts are that Plaintiff is co-administrator of the estate of her deceased father one Gilbert Kwame Amingo Doku. Plaintiff's case against Defendants is that they have occupied her deceased father's property for some years without paying rent contrary to an agreement they reached with her father.

Plaintiff says that in his life time, her father sued Defendants for recovery of possession and per a decision by the Rent Control Office, the rent due and payable was assessed but Defendants have refused to comply with these orders.

Plaintiff says that she has used all peaceful means to get Defendants to vacate the property but it has been to no avail. She therefore seeks the above reliefs from the Court.

Counsel for Defendants has filed an affidavit in opposition to Plaintiff's motion for interlocutory judgment in default of defence. What Counsel intended to do really was to raise a preliminary objection to the motion filed by Plaintiff.

In their affidavit in opposition, Defendants contend that the deceased instituted an action (Suit No. A9/279/06) against 2nd Defendant at the District Court and attached exhibit A in proof. Exhibit A is Reply filed by deceased to 2nd Defendant's Statement of Defence.

In essence, Defendants say that this suit is pending because it survived the deceased so Plaintiff in this matter instead of starting a fresh action should have been substituted and pursued that case.

Defendants also contend that the Circuit Court is the wrong forum and that for the reliefs being sought by Plaintiff, the proper forum should have been with the Rent Magistrate.

In reply, Counsel for the Applicant says that this Court is seized with jurisdiction to deal with this matter and this matter is a fresh suit filed by Plaintiff. She contends that Order 4 rule 6(1) of C.I. 47 does not apply to this situation.

Counsel says that the affidavit in opposition is just a ploy by Defendants to delay the suit further and the preliminary objection raised by Counsel for Defendants is not brought in good faith.

Section 42(1) of the Courts (Amendment) Act, 2002 (Act 620) as provides as follows

(1) The civil jurisdiction of a Circuit Court consists of the following

(a) Original jurisdiction in civil matters in actions between landlord and tenant for the possession of land claimed under lease and refused to be delivered up.

There is no doubt that this matter is civil and it is clear that the Circuit Court has jurisdiction to deal with this particular suit.

The second objection raised by Defendants is a plea of lis alibi pendens. It is the institution of concurrent proceedings in the same or different courts between the same parties for the same remedies. In such situations, the Court must examine the case in order to determine whether they are indeed the same or would yield the same result.

Abban CJ held in the case of **Re Application by New Patriotic Party and Peoples Convention Party (Applicants); Tehn Addy vs Electoral Commission (1996-1997)** SCGLR 216 pages 217-218.

'By this principle, the suit must be between two parties in one court in respect of a given matter and one of the parties goes to another court within the same jurisdiction seeking the same relief. In such a situation, either party may be put to his election as to the forum in which he would like to pursue his claim. in which case the other suit may be dismissed or stayed pending the outcome of the other.'

I agree with Counsel for the Applicant that the two suits are not the same. In exhibit A, the suit at the District Magistrate Court is between, Applicant's deceased father and 2nd Defendant in this current suit.

The suit in this Court is between Plaintiff as administrator of the deceased estate and another Defendant in addition to 2nd Defendant.

We do not have the benefit of seeing the original Writ of Summons to determine if the reliefs sought are the same or not. The only exhibit Defendants attached is deceased Plaintiff's Reply.

These two suits were also not filed concurrently, the suit number on Exhibit A shows that it was filed sometime in 2006 or 2007, whilst this current suit was filed in the year 2022.

By no stretch of imagination can I conclude that these two cases are the same, the two Plaintiffs have acted in different capacities. There is also the addition of 1st Plaintiff who is not a party to the earlier suit which Defendants claim is still pending.

One of the orders a Court can make when a party raises the plea of lis alibi pendens is to put the parties to their election to choose the forum to pursue their case whilst one suit is stayed. Even in this situation, this Court would be handicapped because the Plaintiff in exhibit A is deceased.

This even shows that the two suits are not the same.

Defendants' preliminary objections are dismissed. I have my doubt about the good faith in which this objection was brought. Exhibit A is a suit that was commenced sometime in 2006 and the deceased passed away sometime in 2012, what stopped the Defendant then from moving the Court to dismiss Plaintiff's claims against her and where are the recent processes from the District Court to show that this suit is indeed pending.

What I would do is to grant leave to Defendants to file their Statement of Defence within 14 days of today so that this suit can proceed. Should Defendants refuse to comply with these orders I would be compelled to grant Applicant's motion for interlocutory injunction.

I award costs of GHS1000 against Defendants.

(SGD)
H/H ROSEMARY BAAH TOSU (MRS)
CIRCUIT COURT JUDGE

REPRESENTATION

Plaintiff's Attorney present

Defendants absent

Nana Asaa Bonful Kesse Tachie for Plaintiff.