

**IN THE CIRCUIT COURT HELD AT ACHIMOTA, ACCRA ON THURSDAY,
THE 7TH DAY OF SEPTEMBER, 2023 BEFORE HER HONOUR AKOSUA
ANOKYEWAA ADJEPONG (MRS.), CIRCUIT COURT JUDGE**

SUIT NO. C1/01/2024

**OKAIKOI NORTH MUNICIPAL ASSEMBLY ----- PLAINTIFF/APPLICANT
TESANO, ACCRA**

VRS

**ELAND INTERNATIONAL GH. LTD. ----- DEFENDANT/RESPONDENT
ACHIMOTA, ACCRA**

**PARTIES: PLAINTIFF/APPLICANT REPRESENTED BY REXFORD
FRIMPONG**

**DEFENDANT/RESPONDENT REPRESENTED BY EDDIE
KWARTENG**

**COUNSEL: JAH JOSIAH, ESQ. WITH MRS DOROTHY NEEQUAYE FOR
PLAINTIFF/APPLICANT PRESENT
RICHARD NUNEKPEKU, ESQ. FOR
DEFENDANT/RESPONDENT
PRESENT**

RULING

On the 28th of August 2023, the Plaintiff herein caused a Writ of Summons to be issued in this Court against the Defendant claiming the following reliefs:

- a. Declaration that in the absence of valid building permit from the Plaintiff, the current construction activity at Achimota by the Defendant is illegal and of no legal effect.
- b. A further declaration that Defendant building construction at Achimota without a valid building permit from the Plaintiff is in breach of sections 91 and 94 of the Local Governance Act 2016 (Act 936) as amended by Act 940.
- c. An order directed at the Defendant that building at Achimota without the consent of the Plaintiff is in breach of the building bye-laws of the Plaintiff Assembly.
- d. An order directed at the Defendant to cease construction activity at Achimota, Accra.
- e. Declaration that upon a proper interpretation of sections 91 and 94 of the Local Governance Act, 2016 as amended and section 8 First Schedule of Local Government (Okaikoi North Municipal Assembly) (Establishment) Instrument 2017 LI 2307 the Defendant building activity falls squarely within the authorized administrative area of authority.
- f. Further or other reliefs as in the circumstances may be just including in particular perpetual injunction to restrain the Defendant whether by themselves, their servants, agents, assigns, privies, workmen whomsoever or otherwise howsoever from building on the land clearly situate at Achimota and within the jurisdiction of the Plaintiff Assembly.

On the same 28th of August 2023, the Plaintiff filed notice of motion for an order for interlocutory injunction pending the final determination of the suit.

The Plaintiff on 4th September 2023, filed supplementary affidavit in support of the motion and same was served on the Defendant on 4th September 2023 per the affidavit of service submitted by the Court's bailiff.

After the Defendant was served with the supplementary affidavit, the Defendant entered appearance on the 5th of September 2023 through his lawyer; and on the same day, filed an affidavit in opposition to the application praying for an order for interlocutory injunction.

When counsel for the Plaintiff/Applicant sought to move the said motion for an order for interlocutory injunction, counsel for the Defendant/Respondent raised a preliminary legal objection to the supplementary affidavit filed on 4th September 2023.

This ruling is in respect of the preliminary legal objection raised by counsel for the Defendant/Respondent in relation to the supplementary affidavit filed by the Plaintiff/Applicant on 4th September 2023.

In his argument, counsel for the Defendant/Respondent submitted that Orders 19 and 20 have no room for supplementary affidavit to be filed without leave of Court. Counsel cited the case of Union Mortgage Bank Ltd & another v. Alhaji Fatau El-Aziz & 15 others; suit no.CM/BDC/0511/2021 dated 25th April 2022 unreported. That the High Court held in that case that supplementary affidavit is not known to the rules of the Court and same must be done with leave of Court. He therefore prayed the Court to strike out the said process.

In his response, counsel for the Plaintiff/Applicant argued that when pleadings have not closed a party has liberty to take any step without leave of Court. That the requirement for leave to file supplementary affidavit is required at a time

when pleadings have been closed therefore a party can amend a Writ or file further processes in respect of the matter and shall not require leave in this particular instance.

He further submitted that this Writ was filed on 28th August 2023 and counsel entered appearance on 5th September 2023. That this particular motion was filed on 28th August 2023 and the supplementary affidavit was filed on 4th September 2023. That by these reasons and the circumstances of this particular suit, it is their prayer that the Plaintiff/Applicant did not need leave to file a supplementary affidavit in respect of matters and facts contained in the affidavit in support filed earlier. That as a party can be at liberty to file a process before the entry of appearance and defence, that party can file a supplementary affidavit just as a party shall be at liberty to amend his writ of summons without leave.

He continued that the case referred to by counsel for Defendant is a matter in which pleadings had closed and appearance and defence had been filed within time; and that is not the circumstances of this case. He prayed the Court accepts the supplementary affidavit filed.

Orders 19 and 20 of the High Court (Civil Procedure) Rules, 2004 (C.I. 47) make provision for applications and affidavits respectively. The said orders do not specifically provide for supplementary affidavit.

Order 25 of the High Court (Civil Procedure) Rules, 2004 (C.I. 47) provides that:

“The Applicant shall attach to the Motion paper and supporting affidavit, a Statement of Case setting out fully arguments, including all relevant legal authorities, in support of the application.”

In the circumstances of this case, the Plaintiff/Applicant filed the pending motion and the supporting affidavit on 28th August 2023 and filed the supplementary affidavit on 4th September 2023 and both were served on the Defendant/Respondent before he entered appearance in the main action through his lawyer and further filed his affidavit in opposition.

The said supplementary affidavit sought to attach photos to support a deposition in the affidavit in support, and a Statement of Case was also attached to same. From the filing dates on the processes filed, the Defendant/Respondent was served with the supplementary affidavit before he entered appearance and filed his affidavit in opposition so he had the opportunity to respond to same and moreover the matter had not yet come before the Court, therefore the Plaintiff/Applicant did not necessarily had to seek leave of Court to file a supplementary affidavit.

The circumstances of the instant application is distinguishable from the circumstances of the case which counsel for Defendant/Applicant referred the Court to. In that case the said supplementary affidavit and further supplementary affidavit were filed in response to the affidavit in opposition of the Respondent. The Court is therefore unable to apply same to the circumstances of this case which is entirely different.

It is trite law that judicial decisions are arrived at by application of statute law, precedent and settled practice in the Courts. So it has been the practice that even

though C.I. 47 does not specify the manner in which supplementary affidavit should be filed, it has been the settled practice in the Courts that whenever a party files a motion and supported by affidavit in support and there is a need to give better particulars or file additional documents in support of the depositions made in the affidavit in support therein, the party does so as of right through a supplementary affidavit especially when the supplementary affidavit is filed **timeously before the Respondent files an affidavit in opposition.** In that circumstances the Applicant needs not seek leave of the Court so long as the Respondent has not filed any affidavit in opposition or taken any step in the matter. The processes relating to this application as filed by the Plaintiff/Applicant had been served on the Respondent however the Respondent had not filed an appearance nor affidavit in opposition so in that circumstances there was no need seeking leave of the Court before filing the supplementary affidavit.

From the foregoing reasons, the preliminary objection raised by counsel for the Defendant/Respondent is hereby overruled. In the circumstances, the Plaintiff/Applicant is directed to move the pending motion on notice for an order for interlocutory injunction pending the final determination of the suit.

H/H AKOSUA A. ADJEPONG (MRS)
(CIRCUIT COURT JUDGE)