

**IN THE CIRCUIT COURT '3' SITTING IN ACCRA ON THURSDAY THE 20TH DAY OF
JULY, 2023 A. D. BEFORE HER HONOUR SUSANA EDUFUL (MRS) – CIRCUIT
COURT JUDGE**

SUIT NO. C5/404/2008

BOSEDE OLUTIMEHIN DE WAARD PETITIONER/RESPONDENT

VRS

JOCOB WOLTER DE WAARD

RESPONDENT/APPLICANT

APPLICANT PRESENT AND REPRESENTED, RESPONDENT ABSENT

RULING

The Respondent/Applicant hereinafter referred to as the Applicant, on December 7, 2022 filed this application on notice seeking the leave of this court to issue Writ of Execution. The Applicant was followed by an ex-parte motion filed on December 13, 2022 to service this substantive motion by substituted service and same was granted by this court. The Applicant again filed an ex-parte application on notice for leave to serve the notice to issue Writ of Execution filed out of the jurisdiction of the court. The process was granted and same was served on the Petitioner/Respondent hereinafter referred to as the Respondent and same was proved by an affidavit.

The application before this court is to decide whether or not the Applicant can be granted an order to issue a Writ of Execution on the judgment given by the court on March 4 2011.

Under **ORDER 44 rule 3 of C.I 47** High Court (Civil Procedure rules) 2004 provides for the necessity to for leave to issue Writ of Execution as follows:

(a) where six years or more have elapsed since the date of the judgment or order;

(1) A writ of execution to enforce a judgment or order may not issue without leave of the Court where any change has taken place, whether by death or otherwise, in the parties entitled or liable to execution under the judgment or order;

(c) where the judgment or order is against the assets of a deceased person coming into the hands of his or her executors or administrators after the date of the judgment or order, and it is sought to issue execution against the assets;

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(d) where under the judgment or order, any person is entitled to relief subject to the fulfilment of any condition which it is alleged has been fulfilled; or

(e) where any goods to be seized under a writ of execution are in the hands of a receiver

Section 5 (2) of the Limitation Act (NRCD 54) provides as follows: An action shall not be brought upon a judgment after the expiration of twelve years from the date on which the judgment became enforceable.

The gravamen of Applicants application per paragraph 7 of his affidavit is support is that “I wish to say that the delay in enforcing the said judgment is because the Petitioner is no longer in the jurisdiction since she left when the Judgment was delivered and since I am also usually resident out of the Jurisdiction. I was unable to secure satisfactory legal assistance to enforce the same.”

The evidence on record shows that that the Judgment was given on March 4, 2011. An entry of judgment was also filed on November 15, 2011. This application was also filed on December 7 2022. By computation of time the 12 years stipulated under the law has

not elapsed. The court finds that the applicants are within time and therefore this application is regular.

Consequently, the Applicant's application to issue a Writ of Execution is granted.

The court will not make any order as to cost.

LEGAL REPRESENTATION

DODZI DZIDULA FOR THE RESPONDENT/ APPLICANT

**H/H SUSANA EDUFUL (MRS)
(CIRCUIT COURT JUDGE)**