

**IN THE CIRCUIT COURT OF GHANA HELD IN ACCRA ON THURSDAY, THE
9TH DAY OF MARCH, 2023 BEFORE HER LADYSHIP JUSTICE ROSEMARY
BAAH TOSU (MRS) HIGH COURT JUDGE SITTING AS AN ADDITIONAL
CIRCUIT COURT JUDGE**

SUIT NO C1/155/08

FELICIA ODEY NUNOO
(*SUBSTITUTED BY DANIEL SMITH*)

PLAINTIFF /RESPONDENT

VS

ISAAC TAWIAH LARBI

DEENDANT/ APPLICANT

RULING ON MOTION ON NOTICE TO DISMISS SUIT

"There is no rule or law which allows the applicant to go in and out of court the way the applicant has attempted to do. Public policy alone should prevent him from doing that. The common law principle is that it is in the interest of justice that litigation should be brought to an end. Litigation will never end if litigants would conduct their cases anyhow, and when they lose it on a specific ground, go back home, seek and obtain the grounds omitted in the earlier court hearing and for which they lost their case and re-file the same case in an attempt to revitalize or revive their lost cause."

Brobbey JSC in the case of Boakye vs Appollo Cinemas & Estate (GH) Limited (2007-2008) SCGLR 458- 462.

Defendant/ Applicant filed this motion on notice praying this Honourable Court to dismiss Plaintiff/ Respondent's suit for one, lack of capacity, two, that the suit discloses no reasonable cause of action and three to restore the evidence led by the original Plaintiff in this suit, Felicia Odey Nunoo, who is deceased.

Applicant says that he is the landlord of H/No. B602/7-672, Kaneshie Estate No.2, Accra. He says that the Plaintiff sued him on 20th July 2008 and sought the following reliefs

- a. An order for the recovery of procession of the piece of land that Defendant occupied in Plaintiff's house number 672 Kaneshie Housing Estate, Accra

- b. An order for perpetual injunction to restrain the Defendant from interfering with the Plaintiff's peaceful enjoyment of her property
- c. General damages for trespass.

Applicant says that he entered appearance and filed a Statement of Defence and counterclaimed as follows

- a. Recovery of possession of the entire house
- b. Payment of utility bills in the sum of 1,800,000 cedis
- c. To eject the second Plaintiff, Smith from the single room

In the course of proceedings in the suit, Felicia Odey Nunoo passed on and was substituted by Daniel Smith, because he had been granted Letters of Administration, together with others to administer the estate of the deceased Plaintiff.

In support of his application, Applicant annexed 16 exhibits, in order to save time, I would not list them outright but refer to them as and when the need arises.

Plaintiff/ Respondent is opposed to this motion and filed an affidavit in opposition to this motion. Respondent says that on the issues of capacity and the suit not disclosing any reasonable cause of action, this is not the first time that Applicant has raised these issues in relation to the letters of administration granted to him and two other persons. Respondent attaches exhibit DS1, a motion filed on the 5th July, 2018, in this same suit seeking an Order to dismiss the suit against Plaintiff for lack of capacity.

Infact, Applicant attached the ultimate ruling on this motion in a supplementary affidavit in support of his motion as exhibit 16.

According to Respondent, this Court differently constituted dismissed Applicant's motion to dismiss the suit on the 14th September, 2018. Applicant says that Defendant cannot be heard on the same facts again, this present application is therefore incompetent.

Respondent further says that the Applicant's fixation on the address on the Letters of Administration granted him and others to administer Felicia Odey Nunoo estate is unwarranted because the House number stated therein that is House Number B289/1 Mallam Borla Road, Mccarthy Hill Down, Accra is not the address of a property owed by the deceased, but her last known place of abode.

A copy of this Letters of Administration is attached to Applicant's motion paper as Exhibit 6B.

On Applicant's prayer to restore the expunged evidence of deceased Plaintiff and also to cancel all documents allegedly obtained by fraud, Respondent says those prayers are incompetent, without any merit and should be dismissed by the Honourable court.

Respondent relied on the case of *Boakye vs Appollo Cinemas & Estates (GH) Limited (2007-2008) SCGLR PGE 458*.

Reading through the thirty three (33) paragraphed affidavit in support of the motion to dismiss the suit, what becomes starkly clear is that Applicant's main concern or the focal point of his motion is Letters of Administration granted to the Plaintiff herein, Daniel Smith and others, Exhibit 6B. Applicant misapprehends the listing of the house number in MacCarthy Hill, Accra on the Letters of Administration. Applicant appears to believe that that house is the property for which Letters of Administration was granted.

Which is not so, exhibit 6B, itself is clear that the house number refers to the last known place of abode of deceased and does not include a list of deceased person's properties comprising the estate. A deceased person's property (movable and immovable) which comprise his estate is usually listed on the judicial form 68, which is titled, Declaration of Movable and Immovable Ptropery of a Testator or an Intestate and not of the face of the Letters of Administration granted.

I find Applicant's arguments to be without any merit, exhibit 6B, which has given the powers to Respondent to be substituted for Felicia Odey Nunoo has not been impeached in anyway

Applicant also prays the Court to dismiss this suit because it discloses no reasonable cause of action.

A cause of action is said to be a set of facts sufficient to justify a right to sue or to obtain money, property or the enforcement of a right against another party. In order for a Court to exercise its discretion to dismiss an action under such grounds, it must be apparent on the face of the pleadings that such an action cannot be sustained. It must be such that even if the facts are proved the Plaintiff would not be entitled to the reliefs he seeks.

I do not find Respondent's action before this court to fall in this category. Respondent does have a cause of action against Applicant. Looking at the pleadings

and the reliefs sought. What becomes of Applicant's counterclaim if Respondent's action is dismissed on this ground? Applicant should ask himself that question.

There is also no legal basis for Applicant's request to restore the former Plaintiff's evidence especially since the evidence was expunged with the consent of the Applicant's lawyer at the time as is shown by exhibit DS 2, which is record of proceedings in this suit dated 27th June, 2011, before her Honour Adwoa Coleman.

To conclude, I will refer to the case of **Rev. Dr. Robert Aboagye Mensah & 3 Ors vs Yaw Boakye (2022) DLSC11509** per Amegathcher JSC.

"The rule in Henderson vs Henderson requires the parties, when a matter becomes the subject of litigation between them in a Court of competent jurisdiction to bring their whole case before the court so that all aspects of it may be fully decided (subject of course to any appeal) once and for all.

In the absence of special circumstances, the parties cannot return to the court to advance arguments, claims or defences which they could have put forward for decision on the first occasion but failed to raise...

We are aware that since the formulation of this rule in Henderson vs Henderson, exceptions have been developed to enable parties to file applications and suits already canvassed before the courts on strictly limited grounds. Thus, in Attorney General vs Sweater & Socks Factory Limited (2013-2014) 2SCGLR 946 @ 969, this court per Wood CJ held that the abuse of the process principle does not apply when the Court's attention is drawn to a breach of the Constitution or a jurisdictional matter."

There are exceptions to when a party would be allowed to relitigate matters that have already been canvassed before the Court, these circumstances are exceptional. A party must have raised issues bordering on jurisdiction or constitutional issues.

Applicant has raised none of these issues in this matter, I find this motion to be an abuse of the court processes. It is dismissed as being without merit. I award costs of GHS2000 in favour of Respondent.

(SGD)

H/L ROSEMARY BAAH TOSU (MRS)
HIGH COURT JUDGE SITTING AS AN
ADDITIONAL CIRCUIT COURT JUDGE

Plaintiff/ Respondent present

Defendant /Applicant absent

Emmanuel Hammond with Jocelyn Alidam for Plaintiff/ Respondent