

CORAM: HER WORSHIP AMA ADOMAKO-KWAKYE (MS.), MAGISTRATE,  
DISTRICT COURT '2', KANESHIE, SITTING AT THE FORMER STOOL LANDS  
BOUNDARIES SETTLEMENT COMMISSION OFFICES NEAR WORKERS'  
COLLEGE, ACCRA ON 22<sup>ND</sup> AUGUST, 2023.

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SUIT NO. A9/115/21

DAVID OKAI  
HOUSE NO. NIL  
KWASHIEMAN

::

PLAINTIFF

VRS.

MR. AMOAH  
HOUSE NO. NIL  
KWASHIEMAN

::

DEFENDANT

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### JUDGMENT

The parties herein appeared before a Principal Rent Manager of the Rent Control Department. The Complaint lodged by the Plaintiff (Complainant) at the Rent Control Department was as follows: "I went for a piece of land from Respondent and put up a single room/porch with my own source of money and to defray rent for 23 years at GH ₵6.00 a month. I have been in occupation for 11 years and have moved to own apartment whilst there is nobody in the room. I wanted to give the room to church member to stay

for some time and quit. Landlord says he will not allow my church member to take occupation, though the money has not yet expired. I am hereby pleading with the Rent Authorities to assist me to address this issue. Hence my complaint.”

The Principal Rent Officer after meeting the parties on two occasions subsequently referred the suit to this Court on 23<sup>rd</sup> November 2020 requesting this Court to further investigate and determine the matter as deemed fit. From the proceedings before the Principal Rent Manager, the offence/claim was indicated to be one of breach of agreement. The parties were referred for Court connected mediation at different stages but they were unable to settle their differences and trial was conducted.

As already indicated in this Judgment, this case came before this Court by way of a reference from the Rent Control Department for determination. The power of reference emanates from **Section 6 of the Rent Act, 1963 (Act 220)** which provides as follows:

1. *The appropriate Rent Magistrate may discharge all, or any of the, following functions: —*
  - (a) *may by order, on an appeal by any landlord, tenant or person interested in the premises, that he is dissatisfied with the amount of the recoverable rent of such premises as assessed by the appropriate Rent Officer, vary such amount;*
  - (b) *may by order, on an appeal by any landlord, tenant or person interested in the premises from any determination of the appropriate Rent Officer under this Act on any other matter, decide such matter;*
  - (c) *may by order, on a reference made by the Minister to him, assess the amount of the recoverable rent of any premises; and*
  - (d) *may make an order for the ejectment of any tenant from any premises situated within his area of jurisdiction.*
2. *Without prejudice to the provisions of subsection (1), the appropriate Rent Magistrate shall decide any matter which has been required by this Act to be determined by him or if such*

*matter has been referred to him by the Minister or the appropriate Rent Officer by or under this Act.*

From the above, it is not in dispute that the Rent Officer can make a reference from the Rent Control to the District Magistrate. The Rent Officer's power to refer cases to the Rent Magistrate is only limited to powers inherent under the Rent Act 1963 (Act 220). Outside of that, this Court cannot purport to exercise any other jurisdiction within the Rent Act when the issue is not landlord-tenant related and/or one provided by the Act.

The Rent Act, 1963 (Act 220) makes provisions relating to the extent of the application of the Act. **Section 1** thereof provides in part as follows:

***Section 1—Application of Act, Etc.***

*(1) Subject to the provisions of subsection (2), this Act shall apply to all premises in Ghana.*

*(2) This Act **shall not apply** to—*

*(a) any premises of which a public officer is a tenant by reason of his employment and of which premises the Government is the landlord;*

*(b) **any lease of any premises when such lease, whether entered into or renewed before, on or after the date of the commencement of this Act, was entered into or renewed as a lease of land upon which there were no premises at the time of the grant or renewal of the lease;*** (Emphasis mine)

From this provision, the Rent Officer's jurisdiction under the Rent Act, 1963 and in extension, the Rent Magistrate's jurisdiction in respect of matters referred from the Rent Control Department, does not extend to dealing with a lease (tenancy) where at the time of entering into the agreement, the premises was a bare land on which subsequently, the lessor (tenant) put up a building. The Court cannot purport to assume jurisdiction to

determine such cases by way of a Reference from Rent Control. In that regard, the settled rules and practice is for the parties to institute the action by way of an issuance of a writ of summons. Such cases cannot be determined by a reference from the Rent Officer. Except in some specific circumstances, all civil actions are commenced by a Writ of Summons duly issued under the seal of the Chief Justice. What is more profound is the fact that there were no reliefs sought by Plaintiff in the absence of a Writ of Summons (or even a Statement of Claim, if the Court found fit to so order), which would have contained the reliefs sought in the suit, grounding the suit and subsequent trial.

The mode of commencement of an action in Court is very important as it goes to the core of the action and gives rise to the Court's jurisdiction to entertain that suit. If a wrong commencement process is used, the breach is so fundamental that it goes to the root of the action and a Court is entitled to declare such proceedings a nullity. The fact that a person has a claim which is judicially enforceable does not entitle him or her to institute an action in any manner the person wants which is not sanctioned by the law. Hence, if an action is to be commenced by way of a Writ of Summons, a Reference or a Petition or an Originating Motion cannot substitute that. See the case of **The Republic v High Court, Koforidua; Ex parte Dr. Asare & Others (Baba Jamal and Electoral Commission-Interested Parties) [2009] SCGLR 460** and **The Republic vrs Ghana National Gas Company Ex parte: Kings City Development Company & Another (2021) JELR 109767 (SC)**.

Juxtaposing the above cited authorities with the present case, this Court concludes that no matter how strong a party's case may be, if that party fails to commence his action in the appropriate forum or by the appropriate process, this Court cannot lend its helping hand to the defaulting party. It is the opinion of this Court that regardless of how actively the parties have participated in the proceedings, parties cannot purport to confer jurisdiction on the Court when none exists. In **Quist v. Kwantreng and others [1961] GLR**

**605-615** Ollennu J (as he then was) held that parties cannot by consent or acquiescence confer jurisdiction on a Court where it has none otherwise.

Similarly, in **Ebusuapanyin Kobina Siripi Vs. Esi Impraim & Others (2022) JELR 110062 (SC)**, the Supreme Court on situations where the Court entertains actions wherein it lacks jurisdiction stated as follows:

*“Since no party before a court can give the court a statutory jurisdiction it otherwise lacks, the failure by the Appellants to object to the proceedings at the Trial Court until judgment was delivered is inconsequential as the conduct of a party cannot confer a court with a statutory jurisdiction it does not have”.*

In the abovementioned case, the Supreme Court set aside the judgment that was awarded in the High Court and affirmed by the Court of Appeal and further ordered that the entire proceedings be nullified since it was not commenced properly or was commenced contrary to law. Thus, once the Court lacked the jurisdiction to have determined the matter, the parties’ complicity in same cannot be a justification for the conferment of jurisdiction on the court.

It is trite that a void order or judgment can be set aside by a Court which rendered the decision itself and it is settled law that a Court has a duty to set aside its own void order and lapse of time is generally not a bar to set aside a void order or judgment. See **Network Computer System Ltd v Intelsat Global Sales & Marketing Ltd [2012] 1 SCGLR 218**, **Ecobank Gh. Ltd v Akaidoo Ent Ltd and T.T. U Tay Developers Ltd & Another [2022] DLHC 11758**, **Munji (Substituted by Mumuni) v Iddrisu & Others [2013-2014] 1 SCGLR 429**, **Penkro & Others v Kumnipa II [1987-88] 1 GLR 558 SC** and **Merchant Bank (Ghana Ltd v Similar Ways Ltd [2012] 1 SCGLR 440**.

From the foregoing, I hold that the Court wrongly exercised its jurisdiction when it assumed authority to hear this case. Once the Court has come to that realisation, the Court

has the power to suo motu correct the wrongly exercised jurisdiction. In **Republic v High Court, Cape Coast; Ex Parte Marwan Kort [1998-99] SCGLR 833** the Supreme Court opined on wrongly exercised jurisdiction as follows:

*'As the exercise of a jurisdiction which a particular court does not have would render null and void proceedings in that matter it is incumbent on the judge who has been called upon to exercise a jurisdiction to make sure, save in debatable situations, that he has jurisdiction before he embarks on exercising that jurisdiction.'*

In **Mosi vrs Bagyina [1963] 1 GLR 337**, the Court held that:

*"Where a judgment or an order is void either because it is given or made without jurisdiction or because it is not warranted by any law or rule or procedure, the party affected is entitled ex debito justitiae to have it set aside, and the court or a judge is under a legal obligation to set it aside, either suo motu or on the application of the party affected. No judicial discretion arises here. The power of the court or a judge to set aside any such judgment or order is derived from the inherent jurisdiction of the court to set aside its own void orders and it is irrespective of any expressed power of review vested in the court or a judge; and the constitution of the court is for this purpose immaterial. Further, there is no time limit in which the party affected by a void order or judgment may apply to have it set aside".*

From the foregoing, it is the opinion of the Court that the process for the commencement of the instant action was erroneous. The suit was not properly commenced and the failure to so commence an action appropriately goes to the root of the action and nothing can be built thereon. It is on this basis that I set aside the entire proceedings in this suit and direct the Plaintiff to issue a Writ of Summons if he is desirous of so doing to enable him set out the reliefs he seeks.

There shall be no order as to costs.

**[SGD]**  
**AMA ADOMAKO-KWAKYE (MS.)**  
**MAGISTRATE**

**Counsel**

Emmanuel Owusu-Banah, Esq. for the Plaintiff.

No legal representation for the Defendant.