

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 10TH OCTOBER 2023.

A9/178/23

GEORGINA OWUSU

DANSOMAN :: PLAINTIFF/RESPONDENT

VRS.

NII OTU AHIAKWA

DANSOMAN :: DEFENDANT/APPELLANT

JUDGMENT

This is an Appeal against the determination of Emmanuel H. Kporsu, the Rent Manager, Rent Control Office, Accra which recommended the following:

1. Order Respondent/Tenant to pay any Rent Arrears from 1st January 2023 till the vacation date of the Respondent as provisioned by Section 31 of the Rent Act, 1963 (Act 220)
2. Order Respondent/Tenant to vacate from the said premises on a date to be determined by His/Her Lordship and as also provided by Section 17(1)(a) of the Rent Act, 1963 (Act 220).
3. Award any interest or cost on the amount owed by the Respondent to Complainant/Landlord, as His/Her Lordship deem fit.

A Notice of Intention to Appeal to Rent Magistrate together with a Notice of Appeal were filed on 14th February 2023. The Appellant anchored his appeal on five grounds as stated in the Notice of Appeal:

- a. Georgina Owusu has no capacity to sue the tenant.
- b. Georgina Owusu has not obtained Letters of Administration to enable her sue, not being the Head of Family.
- c. Georgina Owusu did not get the Power of Attorney, consent and approval of her other five siblings of their late father, Samuel Kofi Owusu to sue.
- d. The Rent Manager erred in his ruling when he knew that Letters of Administration had not yet been obtained. The ruling is therefore null and void.
- e. The house – 2 bedrooms and a hall was self-acquired property for his six children aged between 53 years and 36 years from five different women. It is not family property.

Counsel for the Appellant filed his Written Submissions on 19th June 2023 whereas Counsel for the Respondent filed his Written Submissions on 17th July 2023. I must state at the onset that the parties to the case and in effect the appeal are as set out above in the title of the suit and that parties cannot by themselves choose to add at their own instance, any other parties not sanctioned by the Court and by Rules of Procedure.

From the Grounds of Appeal filed, it is this Court's considered view that grounds a) to d) are all in relation to capacity of the Respondent to have commenced the action at the Rent Control Department and as such they would be discussed under the issue of capacity. I will now proceed to address the Grounds of Appeal and as already stated, Grounds a) to d) would be discussed together.

Capacity is a threshold issue because it gives rise to the issue of the court's jurisdiction to entertain an action. Capacity goes to the root of every action and so where capacity is lacking, the writ is a nullity and so are all proceedings and judgment founded thereon. Capacity is very essential in the institution of any action in Court and the Court itself can even raise it. In the case of **Kasseke Akoto Dugbartey Sappor v. Very Rev. Solomon Dugbartey Sappor & 4 Ors. [2019] 146 GMJ 230 C.A**, Her Ladyship B. Ackah-Yensu, JA (as she then was) noted as follows at page 247:

“The issue of capacity is a threshold and foundation issue which can be raised at any time. It can even be raised by the court itself because the lack of capacity deprives the court of the jurisdictional competence to entertain an action at any stage of a judicial proceeding”

Again, in the case of **Kwabena Acheampong & 2 others v Seth Welbeck (2021) JELR 109114, CA**, the Court held as follows:

“Contrary to the reasoning of the learned trial judge, the true and current position of the law is that the court is bound to raise capacity even if the opponent did not raise it or the parties did not contest the case on the basis of want of capacity. This principle finds expression in the case, *Owuo v. Owuo [2017-2018] 1SCGLR 730* wherein the Supreme Court propounded the law that the court has the duty to raise capacity even if the parties did not raise it as an issue between them.”

The law is also settled that where the issue of capacity to institute an action arises, it must be determined first before the merits of the case can be gone into. In the case of **Ebusuapanyin Yaw Stephens Vs. Kwesi Apoh [2010] 2 MLRG 12**, His Lordship Anin Yeboah JSC (as he then was) speaking for the court at page 26 stated that if an action

succeeded on a plea of limitation, lack of jurisdiction, or lack of locus standi, the Trial Court for that matter the Appellate Court should not proceed to determine the merits of the case regardless of the evidence. In the case of **George Fianko Sackey & Another v Augustina Quaye & Another (2016) JELR 6774 CA**, the Court held that:

“It is settled law that where the issue of capacity to institute an action arises it must first be determined before the merits of the case itself is gone into. Thus in the case of Fosua and Adu-Poku vrs Adu-Poku Mensah (2009) SCGLR 310 it was held that ‘In considering whether or not the properties in dispute were for the families, the trial judge should have gone forward to also consider, on the assumption that they were family properties, whether or not the plaintiffs had the requisite capacity to sue in respect thereof. That was irrespective of whether or not the parties had made that an issue for trial. Capacity to sue was a matter of law and could be raised by a party at any state of the proceedings, even on appeal. It could also be raised by the court suo motto’. See also Sarkodee I vrs Boateng II (1982 – 83) GLR 715.”

The issue of capacity is very crucial for an action to be capable of being legally maintained and as such, where a Plaintiff is seen to lack capacity, it renders the Writ of Summons (or the relevant commencement process) a nullity and all proceedings and judgment founded on it likewise become a nullity. The burden falls on the Plaintiff to establish his or her capacity once his or her capacity is challenged and it is thus no excuse to say he has a cast iron case and so must be heard on the merits. There is a plethora of authorities on the subject of capacity by the Courts.

Counsel for the Appellant contends that the Respondent had no Letters of Administration and as such she had no capacity to commence the matter at the Rent Control Department and in the absence of that, the decision of the Rent Officer was in error. In the case of **Comfort Amoonaquaye v William Quayson & Another (2019) JELR 108080 (HC)** a

similar argument was made to the extent that the Plaintiff therein had not obtained Letters of Administration to deal with her mother's estate and she did not therefore have capacity to institute the action. His Lordship Alexander Osei Tutu J. held as follows:

“Counsel for the Defendant in his written addresses further submitted that since the Plaintiff did not apply for letters of administration after her mother's death before dealing with her estate, she is in want of capacity to bring this action. Counsel referred to a number of judicial decisions, including the case of the Republic v. High Court, Accra, Ex parte Aryeetey (Ankrah – Interested Party) [2003-2004] SCGLR 398 to conclude that a person who has not applied for letters of administration or probate as the case may be, cannot bring an action in Court. The principle, as submitted by the learned counsel would have spilled some toxic to the Plaintiff's case some years ago. But I am afraid, the deadly bite in the submission has now been neutralized by the Supreme Court in the case of Adisa Boya v. Zenabu Mohammed (Substituted by Adama Mohammed) & Mujeeb [2018] DLSC 4225, when they held that a beneficiary under an intestate estate can still sue and be sued in the absence of letters of administration.”

In the **Adisa Boya** case referred to supra, the Supreme Court speaking through His Lordship Gbadegbe JSC noted as follows:

“Proceeding further, we are of the view that by virtue of the rules on intestacy contained in section 4(1)(a) of the Intestate Succession Law, PNDC Law 112, following the death of the father of the defendants and their mother- the original 1st defendant, the property devolved upon the children and as such they had an immediate legal interest in the property that they are competent to defend and or sue in respect of **and in any such case either the children acting together or any**

of them acting on behalf of the others may seek and or have an order of declaration of title made in their favor.” [emphasis mine]

The above cases confirm the proposition that a person need not necessarily obtain letters of administration to have capacity to sue in respect of an estate of a deceased person based on the peculiar circumstances of a case.

From the Form 7, Complaint against conduct of landlord/tenant/person interested in premises, the complaint was lodged by “Georgina Owusu/Siblings” and the complaint was that the Appellant occupies two bedroom self-contained house at GH¢ 600.00 monthly and that although he had been served with an ejection notice to vacate the premises, he had failed to vacate, hence the complaint to seek the assistance of the Rent Control Department. As part of the documents presented at the Rent Control Department on record is a letter issued to the Appellant dated 6th May 2022 signed by ‘Owusu Family’ with no indication as to who exactly signed, serving the Appellant notice that there would be no renewal of his tenancy after its expiration.

There is also another letter dated 2nd September 2022 written by Samuel Kwame Frimpong who is described as Head of Family and addressed to the Appellant giving him notice to vacate the premises at the end of September 2022. There is yet another unsigned letter written by one Charles Owusu to the Rent Control Department dated 19th September 2022 stating that his mother was unwell when she entered into “the previous transaction”. He stated that the Respondent had been given authority to act on their behalf. It was not shown from the said letter the locus of this Charles Owusu, who and who had given their consent to Respondent and in what capacity those people had given their consent and there was no evidence of that authority.

In his Written Submissions, Counsel for the Respondent stated that Letters of Administration had been taken, that a Power of Attorney was donated to the Respondent upon commencement of the action at the Rent Control Department (and not even prior to the institution of the case) and also that the Respondent's siblings had given her their consent to evict the Appellant, and that all these were furnished the Rent Officer. As already stated supra, the onus lies on the one whose capacity has been challenged to satisfy the Court that he or she possesses the requisite capacity. None of the documents, that is the Letters of Administration, Power of Attorney or Consent Notice was on record or furnished the Court.

Section 1(1) of the Administration of Estates Act, 1961 (Act 63) provides that the movable and immovable property of a deceased person devolves on his personal representatives with effect from his death. **Section 108(1)** of the same Act interprets personal representative to mean the executor, original or by representation, or administrator for the time being of a deceased person. If the assertion of Counsel for the Respondent is anything to go by, then the Administrator of the estate is the proper person to institute an action in respect of the property. There is no evidence that the Respondent is that Administrator or has authority by way of a Power of Attorney from the said Administrator to represent him or her.

Where there exists no Letters of Administration, the Respondent if she is a beneficiary of the estate, would be able to institute the action with her siblings, the other beneficiaries, acting together, or she could sue, acting on behalf of the others, as stated in the **Adisa Boya** case. There is nothing pointing to the fact that she in fact, sued with their consent and authority and was acting on their behalf.

To further muddy the waters, there even appears to be no certainty on record as to the nature of the property; that is, if the property is a personal property of someone or a

family property since in each of these instances, the law clothes certain specific persons with the capacity to institute an action in respect of such property. This is very important especially when the letters on record written to the Appellant emanate from a 'Head of Family (Mr. Samuel Kwame Frimpong)' and from 'Owusu Family'. In the Written Submission of Respondent's Counsel, he himself also submitted that the property is a family property. It is trite that it is the Head of Family who has the capacity to sue in respect of family property, subject of course to the legally provided exceptions.

The Respondent clearly could not satisfy the Court that she was clothed with the requisite capacity to institute the action at the Rent Control Department. Having regards to the discussions done *supra*, grounds a. and c. succeed. With the issue of capacity having succeeded, there would be no necessity discussing Ground e.

Cost: GH₵1,500.00 is awarded for the Defendant/Appellant against the Plaintiff/Respondent.

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

Counsel

S.R. Brempong, Esq. for Defendant/Appellant

Dr. Eugene Asiamah-Boadi, Esq. for Plaintiff/Respondent

