

**IN THE DISTRICT COURT HELD AT WEIJA, ACCRA ON TUESDAY THE 28<sup>TH</sup> DAY OF MARCH, 2023 BEFORE HER WORSHIP RUBY NTIRI OPOKU (MRS), DISTRICT MAGISTRATE**

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SUIT NO. G/WJ/DG/A4/06/21

**DORINDA NAA KWARLEY TITUS GLOVER                      PETITIONER**

**VRS**

**ANTHONY KWEKU NDOM DAMPSON    RESPONDENT**

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**PARTIES:**

PETITIONER/RESPONDENT IS PRESENT

LAWFUL ATTORNEY FOR RESPONDENT/ APPLICANT IS PRESENT

**REPRESENTATION:**

ODENKEY MENSAH ESQ APPEARING FOR THE PETITIONER/ RESPONDENT PRESENT

ABRAHAM BOADU ESQ. APPEARING FOR THE RESPONDENT/ APPLICANT PRESENT

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**RULING**

The Respondent/ Applicant (hereinafter called the applicant) has appointed his father, Emmanuel Kwamena Dampson as his Attorney by a Power of Attorney filed in this court on 17<sup>th</sup> August 2022 and exhibited as Exhibit 1 to bring the instant application on his behalf praying that the execution of the judgment of this court dated 28<sup>th</sup> day of June 2022 be stayed pending the determination of an appeal filed on 17<sup>th</sup> August 2022 at the High Court.

This application has been brought on the grounds that the judgment of this court is wrong in law as it was entered in breach of the natural justice principle of Audi Alteram Partem and ought to be stayed pending the determination of the appeal.

The Petitioner / Respondent (hereinafter called the respondent) is vehemently opposed to the instant application. According to her, Mr. Emmanuel Dampson, the father of the Respondent by a sworn declaration filed on the 24<sup>th</sup> February 2022 stated, "That my son informed me that he is not interested in the divorce proceedings and that the Petitioner can go ahead with same."

She takes a strong objection to the deponent and argued in paragraph 12 of the affidavit in opposition that it was the Attorney who signed the affidavit in support of the motion and that it is obvious that the Applicant did not swear to the affidavit filed on 17<sup>th</sup> August 2022 in Ghana.

At paragraph 13 of the affidavit in opposition, the respondent has challenged the validity of the Power of Attorney (Exhibit 1) which the Attorney is relying on as according to her, same is not properly witnessed and sealed.

In *Nii Tetteh Kpobi Tsuru v Agri Cattle & Ors*, Civil Appeal No: J4/15/2019, the Supreme Court held as follows;

"The law is trite that capacity is a fundamental and crucial matter that affects the very root of a suit and for that matter, it can be raised at any time even after judgment on appeal. The issue is so fundamental that when it is raised at an early stage of proceedings, a court mindful of doing justice ought to determine that issue before further proceedings are taken to determine the merits of the case. Thus a plaintiff whose capacity is challenged needs to adduce credible evidence at the earliest opportunity to satisfy the court that it had the requisite capacity to invoke the jurisdiction of the court. If this is not done, the

entire proceedings founded on an action by a plaintiff without capacity would be nullified should the fact of non-capacity be proved.”

The issue to be resolved is whether or not the attorney is clothed with capacity to move the present application.

On the face of the affidavit in support of the present motion filed on 5<sup>th</sup> October 2022 and the supplementary affidavit filed on same day, the deponent in both cases is stated as Anthony Kweku Ndom Dampson, the applicant in this case yet this same deponent describes himself as the Attorney for the Respondent in paragraphs 2 of both affidavits. The signature on both affidavits are clearly different from that on the Power of Attorney tendered as Exhibit 1.

From these facts, I find that the Applicant could not have been in Ghana at the time the application was filed and could not have signed the processes as the deponent.

Again, I find nothing from the face of the Power of Attorney (Exhibit 1) to show that same was produced locally.

In fact, it is patent on the face of the Power of Attorney that the address of the donor is “Anthony K.N. Dampson, 45 AKKER STREET, ORMONDE. 2091, SOUTH AFRICA.”

This shows forcefully that Exhibit 1 was issued from South Africa to be used in Ghana Courts.

It is trite that a Power of Attorney executed abroad must be notarised abroad by a notary public before it can be used in Ghana. See the cases of *Fidelity Bank Ghana Limited v Anita Asare & Ors*, Suit no: BFS/69/16 delivered on 28<sup>th</sup> March 2018 and *Asante-Appiah v Amponsah* [2009] SCGLR 90.

On the basis of the law cited supra, I find that the Power of Attorney before this court was executed in South Africa by the Donor to be used in Ghana Courts and as a result same ought to have been notarised by a Notary Public abroad other than the named witness.

Accordingly, the court rejects the Power of Attorney (Exhibit 1) as invalid and holds that the Attorney lacks the capacity to represent the applicant.

Accordingly, the application is struck out for want of capacity. Costs of GHC2,000.00 is awarded in favour of the Respondent against the Applicant.

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**H/W RUBY NTIRI OPOKU (MRS.)**  
**(DISTRICT MAGISTRATE)**