

IN THE CIRCUIT COURT HELD AT KWABENYA ON FRIDAY THE 12TH
DAY OF MAY, 2023 BEFORE HER HONOUR MAWUSI BEDJRAH, ESQ.,
CIRCUIT JUDGE

SUIT NO. A4/28/2021

ERNESTINA EDUFUL

PETITIONER

VRS

MARK GBORGBOR

RESPONDENT

PETITIONER

PRESENT

RESPONDENT

PRESENT

COUNSEL FOR PETITIONER RICHARD ADU DARKO

PRESENT

COUNSEL FOR RESPONDENT CLAUDIA ABBEY

HOLDING LAMPTIN APANGA'S BRIEF

PRESENT

RULING

1.0 Introduction

1.0 Petitioner, per the motion filed by her counsel on 10th February, 2023, is seeking leave of the court to issue writ of possession, based on Order 43 Rule 3 of the High Court (Civil Procedure) Rules, 2004 (C.I. 47). Petitioner's application is in respect of execution of the judgment of the court dated 10th March, 2022, which adopted the terms of settlement filed by the parties. Petitioner states, among others, that the application is in the interest of justice and the general welfare of the children, in order to take the necessary steps for the children and the petitioner to be in possession

of the matrimonial home. Petitioner also prays that the grant of the writ of possession should include a provision directed at respondent for the payment of an amount of GH¢22,000.00, being arrears of monthly maintenance and GH¢30,000.00, being the alimony ordered under the judgment.

- 2.0 Respondent, per the affidavit in opposition filed on 16th March, 2023, states that the house in question is his self-acquired property. Nevertheless, out of his love for the children, he pledged to settle the property in their names by creating a trust and vesting the property in himself as the trustee, for the benefit of the children until they attain majority and decide how to deal with the property. His further argument is that the terms of settlement do not confer any beneficial interest on the applicant.

2.0 Analysis

- 3.0 Under Order 43 Rule 3 of C.I. 47, a writ of possession to enforce a judgment or order for the recovery of possession of immovable property in a situation as in this case, shall not be issued without leave of the court. One of the considerations for the leave to be granted is that it must be shown that every person in actual possession of the whole or any part of the immovable property has received such notice of the proceedings. Also, where the writ of possession is granted, it may include provision for enforcing the payment of any money adjudged or ordered to be paid by the judgment or order which is to be enforced by the writ.
- 4.0 Respondent was duly served, hence the filing of the affidavit in opposition to the application. It is of interest to refer to paragraph (f) of the terms of settlement, which provides that;

“The Respondent agrees to settle in favour of the children their matrimonial home at Dome Pillar 2.”

- 5.0 Per the terms of settlement of the parties, the property is their matrimonial home. Further, the parties agreed that it is the respondent who would settle the property in favour of the children, and this was subsequently adopted by the court.
- 6.0 At the time of filing of the petition, that is 15th June, 2021, the children of the marriage were nine (9) and eight (8) years respectively. Obviously, at the time of seeking leave to issue writ of possession, they would not have obtained the age of majority to be able to do so on their own. In this instance, who would be the appropriate person to act on their behalf? Counsel for the applicant argued before the court that ordinarily, the person with custody of the children will assume the position of next-friend, who acts in legal proceedings on behalf of the children. Counsel for respondent on the other hand disagreed with him, on the basis that the terms of settlement do not confer any beneficial interest on the applicant.
- 7.0 To be able to address these arguments, the best point of reference is the specific provision of the terms of settlement as agreed by the parties, which has become the judgment of the court. The provision, for the avoidance of doubt, is repeated as follows; *“The Respondent agrees to settle in favour of the children their matrimonial home at Dome Pillar 2.”* The statement is clear as to who would settle the property in favour of the children. We are not informed of how the parties agreed that this should be done and so if respondent decides to do so by a deed of trust and has exhibited same to show the steps taken to put the judgment into effect, the

court cannot be called upon in this instance to determine whether the deed of trust is appropriate or not.

8.0 “The law is clear that before a court of competent jurisdiction could enter judgment based on supposed terms of settlement by parties in an action, it must be made manifestly clear that the parties in the suit or action did fully agree to all the terms entered as judgment. That explains why judgments of this nature are termed as CONSENT JUDGMENTS”.

9.0 Normally, the agreed terms are signed by the parties in the suit or action and filed at the Registry of the court. When the terms are brought to the notice of the court, the court adopts them after having satisfied itself that both parties are agreeable to what has been filed as terms of settlement. (**ELOI KOFI MENSAH SIMMONS vs. CATHERINE SIMMONS [2016] DLSC2863**). Per the records of this Court, the terms of settlement was adopted by this court, differently constituted, on 10th March, 2022 and thus became a final judgment of the court.

3.0 Conclusion

10.0 Per the analysis above, I deny petitioner leave to issue writ of possession in respect of the property. I find that petitioner is not clothed with the necessary capacity to apply for same, per the judgment of the court dated 10th March, 2022. Petitioner’s prayer for the payment of money due her based on the judgment is automatically denied, since leave to issue writ of possession has been denied.

I make no order as to cost.

SGD

Her Honour Mawusi Bedjrah