

IN THE CIRCUIT COURT (11) HELD AT ACCRA ON WEDNESDAY, THE 15TH DAY OF MARCH 2023 BEFORE HER HONOUR HALIMAH EL-ALAWA ABDUL-BAASIT SITTING AS AN ADDITIONAL CIRCUIT COURT JUDGE

SUIT NO. C1/33/2022

HERITAGE HOMES AND
CONSTRUCTION GHANA LTD.
HOUSE NO.: 102/18, ABELNKPE,
ACCRA

PLAINTIFF

VS.

1. EMMANUEL KUSHIE SUNU
2. AFOR EDWARD
UNNUMBERED HOUSE, MEDIE,
ACCRA

DEFENDANT

PARTIES:

LEGAL REPRESENTATION:

RULING

**MOTION ON NOTICE FOR AN ORDER TO REMOVE 1ST AND 2ND
DEFENDANTS FOR NOT BEING NECESSARY PARTIES TO THE SUIT
PURSUANT TO ORDER 4r5, C.I. 47**

Background

This Ruling is in respect of a Motion on Notice filed on the 16th of December 2023 by Counsel for and on behalf of the Defendants/Applicants (hereinafter referred to as the Defendants) praying for an Order to disjoin Defendants from the Suit and subsequently strike out the action as Defendants are not necessary parties in

determining the reliefs being sought by Plaintiff upon the grounds set out in the accompanying Affidavit.

On the 21st of April 2022, the Plaintiff issued a Writ of Summons and a Statement of Claim against the Defendants claiming for the following reliefs;

- a) A declaration of title of 1.04 acres of land situate at Medie in favour of Heritage Homes and Construction Ghana Limited.
- b) Further declaration that the Defendants do not own any part or portion of Heritage Homes and Construction Ghana Limited lands at Medie, Accra.
- c) A declaration that Defendants are trespassers.
- d) An order for recovery of possession of Heritage Homes and Construction Ghana Limited lands at Medie.
- e) An order for demolition of illegal structures situate on Heritage Homes and Construction Ghana Limited lands at Medie, Accra
- f) General damages for trespass.
- g) Perpetual injunction restraining the Defendants, their agents or assigns from interfering with Plaintiffs land, the subject matter of the suit.

The basis of the Plaintiff's reliefs, among others, is that he is the rightful owner of the subject matter land which the Defendants have entered and are claiming ownership of the land with land guards breaching public peace. The Statement of Claim concludes by stating that the Defendants are trespassers who do not have any right to enter the Plaintiff's land to exercise right of ownership over the same land. Subsequently and pursuant to an Order for Substituted Service of the Writ of Summons and Statement of Claim, the Defendants entered Appearance on the 26th of October 2022. The Defendants upon Entry of Appearance informed the court that the Defendants are correctly known as Emmanuel Korsi Sunu and Benjamin Affor. The Defendants filed their Statement of Defence on the same day

and stated among others that they have been in possession, occupation and quiet enjoyment of the land since 2005 without any disturbance. They stated further that they share a boundary with one Adu Kofi Djin who acquired his interest sometime in 2012 in a relatively bigger parcel of land and walled the entire land including the Defendants' land and they later transferred their interest in the land to the said Adu Kofi Djin in April 2022 when he expressed interest in owning the entire land within the wall he erected. The instant Application is to disjoin the Defendants and subsequently strike out the suit entirely.

The Defendants'/Applicants' Case

Bernice Narkor Nartey deposed to the Affidavit in Support on behalf of the Defendants/Applicants (herein after referred to as Defendants) and stated among others that they have no stake in the land as they have divested their interest to one Adu Kofi Djin before the Plaintiff instituted the instant action. The Defendants stated further that on the basis of the transfer or transaction, the Defendants have no further interest in the subject matter of this suit and the right person to sue will be Adu Kofi Djin who now exercises legal and equitable rights over the subject matter land. The Defendants again stated that in the most unlikely event that the Plaintiff succeeds in this suit, it will be claiming from Defendants who have no stake in the land as the land has been transferred and indefeasibly certificated, and whose total acreage is 0.33 acres, not even half of what Plaintiff is claiming whilst the bigger part of the land is owned by a party not in this suit.

The Defendants further exhibited a Stamped Deed of Assignment (Indentures) from Defendants to Adu Kofi Djin marked as **Exhibit 'BNN 1 Series** evidencing

transfer of the subject matter land to the said Adu Kofi Djin as well as **Exhibit 'BNN 2'** which is a Land Certificate obtained on 2nd Defendant's land after transfer to Adu Kofi Djin together with and **Exhibit 'BNN 3'** which is Adu Kofi Djin's Land Certificate on his original bigger acquisition. The Defendants deposed further that the said Adu Kofi Djin has since sued the Plaintiffs in the High Court over the same land with the Plaintiff being the Defendant in that suit with **Exhibit 'BNN 4'** as the High Court Writ of Summons the Court. The Defendants finally exhibited a copy of an Order for Interlocutory Injunction restraining both the Plaintiff and the said Adu Kofi Djin from selling or developing the land until the final determination of that suit and marked same as Exhibit **'BNN 6'**. The Defendants concluded by deposing that removing the Defendants and striking out this instant suit and making the parties focus on the matter at the High Court will save the parties cost, shorten litigation time and not burden the courts with a matter whose outcome will not be consequential enough to conclusively deal with the dispute as the Defendants do not own the land in dispute.

The Plaintiff/Respondent's Case

The Plaintiff/Respondent (hereinafter referred to as the Plaintiff) deposed to an Affidavit in Opposition to the Application through Salifu Mahama, the Managing Director of the Plaintiff Company. He deposed, among others that the Defendants had on the 19th of October 2022 filed an Application to set aside the Court's Judgment in default of Appearance wherein they exhibited copies of their Land Certificates to indicate their ownership of the subject matter land. The Plaintiff deposed further that the acquisition of Title by the said Adu Kofi Djin was irregular especially after transfer to purchase was within Six (6) months. The

Plaintiff continued by stating that the matter was before the Circuit Court during which time a transfer was effected to Adu Kofi Djin without the knowledge of the Plaintiff and the Defendants knew of these facts but failed to join the suit and rather instituted a fresh suit at the High Court on the 10th of October 2022. He concluded by stating that an exhibited Search Result for Title shows that the Defendants are essential for the determination of the matter and further prayed for the Application to be dismissed.

Analysis

This Application was brought under Order 4 r 5 of the High Court Civil Procedure Rules, 2004, C. I. 47 and Order 4 r 5(2)(a) provides that *“At any stage of proceedings the court may on such terms (a) order any person who has been improperly or unnecessarily made a party or who for any reason is no longer a party or a necessary party to cease to be a party.”* It is trite that the court is vested with that power at any stage of the proceedings to order any person/party who ought to have been joined as a party or whose presence before the court is necessary to ensure that all matters in dispute in the proceedings are effectively and completely determined and adjudicated upon to be added as a party. A critical scrutiny of Order 4 r 5(2) is that an application for joinder shall be granted where the presence of the party would ensure that all matters incidental to the proceedings were effectively and completely determined. The main aim is to avoid multiplicity of suits, so that, where the presence of the party to the suit would not assist the court in any way to completely and effectually adjudicate the issues in controversy that party ought not to be joined.

In the case of **Indepth Network vs. Daniel Kofi Baku & Nine Others** in SUIT NO: GJ/826/2018/[2019]DLHC 6809, the learned **Justice Kweku T. Ackaah-Boafo**, *'...it is worth noting that the Courts have differed over the grounds for joining a person whose presence is necessary for the effectual determination of a matter'*. He stated further that *'... my read of the earlier cases inform me that two legal positions have over the years been articulated. The two positions can be referred to as narrow and wide views. While such cases as: (i) APPENTENG v BANK OF WEST AFRICA LTD. (1961) GLR 81; (ii) BONSU v BONSU (1971) 2 GLR 242; and (iii) ZAKARI v PAN AMERICAN AIRWAYS (1982- 83) GLR 975 can be said to illustrate the narrow view. Other cases such as USSHER v DARKO SUPRA and COLEMAN v SHANG (1959) GLR 389 in my view represent the wide position'*. In **Ussher vs Darko** (supra), Apaloo JA (as he then was) stated that *"...the jurisdiction of a court to join a party to an action to avoid multiplicity of suits ... might be exercised at any stage of the proceeding... Whether the application should be acceded to or denied, was a matter for the exercise of the trial judge's discretion and save that such discretion must be exercised judicially and in a manner conformable with justice, no fixed rules existed as to when and how it should be exercised."* In light of the above, the issue before the court is whether the 1st and 2nd Defendants are necessary parties before the court.

Per the record, the Defendants, prior to entering appearance to the instant suit, had transferred the interest in the subject matter land to one Adu Kofi Djin and by transferring their interest in the land to a third party, the Defendants, on the face of the evidence before this court, are no longer the owners of the subject matter land. Additionally, the said Adu Kofi Djin, who now holds title to the subject matter land has instituted an action at the High Court Accra against the Plaintiff herein who consequently filed his Statement of Defence. The Plaintiff herein in his Statement of Defence marked as **Exhibit 'BNN 5'** per the

Defendant's Affidavit in Support to the instant Application counterclaimed as follows;

- a) A Declaration that the Defendant had a valid grant of the disputed land from the Plaintiff.
- b) Perpetual injunction restraining the Plaintiff, his assigns, heirs, privies, servants, agents, workmen, successors and all those who claim through them from having anything to do with the Defendant's land.
- c) Damages.
- d) Cost, including attorney's fees.
- e) Any other reliefs that might come to the fore through the pleadings and evidence.

Thus, this instant suit, the Writ and Statement of Claim issued at the High Court as well as the instant Plaintiff's Statement of Defence and the Counterclaim gives rise to a multiplicity of issues in Two (2) different courts with respect to the subject matter or portions of the subject matter, as it involves and/or includes same parties. Order 1 Rule (2) of C.I. 47 provides that; *'These Rules shall be interpreted and applied so as to achieve speedy and effective justice, avoid delays and unnecessary expense, and ensure that as far as possible, all matters in dispute between parties may be completely, effectively and finally determined and multiplicity of proceedings concerning any of such matters avoided'*.

In the case of **Comet Construction Co., Ltd. vs Ghana Commercial Bank, Tema (Garnishee) [1976] 2 GLR 220**, the court held that *'... a court charged with the primary function of dispensing justice and with the duty of ensuring a reduction in the number if not the elimination of a multiplicity of suits is unworthy of its name ...'*

Conclusion

The Defendants made it clear in their Statement of Defence that they have no interest in the land in dispute and considering the reliefs being sought by the Plaintiff, I do not see how the continuous presence of the Defendants will aid the court in the determination of the case as they are not necessary parties to this suit to enable proper adjudication as contemplated in law. I appreciate the substantive grounds on which the Plaintiff opposed the Application, however, my view is that disjoining the Defendants herein will enable the Plaintiff put his whole case before the High Court for a complete and final determination and avoid multiplicity of suits which will be the result if this instant Application is refused. I am again of the considered opinion that in order to avoid multiplicity of suits, the parties herein should focus on the matter as instituted at the High Court for all issues to be determined especially when the High Court has since restrained the Plaintiff herein and Adu Kofi Djin from selling and developing the land.

Maintaining the Two (2) suits sins against Order 1 Rule 2 of C.I. 47 and will cause unnecessary delays and expense especially when the parties have shown that they do not have any interest in the matter. The effect of Order 4 r 5(2)(a) of the High Court Civil Procedure Rules, 2004, C. I. 47 is that if after dealing with the misjoinder, there are persons before the court who claim rights and interest in the subject matter, only then would proceedings continue. If after the misjoinder, there is no party disputing over the subject matter land, then there will be no basis to continue to determine anything. See the case of **Rowland Kofi Dwamena vs. Richard Nartey Otoo and the Regional Lands Officer Lands Commission, Accra**; Civil Appeal No. J4/47/2018; [2019] DLSC 6501.

In light of the above discourse, the Application is granted as the Defendants are not the necessary parties to the suit and are hereby disjoined. Since there are no longer Defendants before the court, the suit is accordingly struck out.

**H/H Halimah El-Alawa Abdul-
Baasit**

Circuit Court Judge