

**IN THE CIRCUIT COURT OF GHANA HELD IN ACCRA ON THURSDAY,  
9<sup>TH</sup> DAY OF FEBRUARY, 2023 BEFORE HER HONOUR KIZITA NAA  
KOOWA QUARSHIE, CIRCUIT COURT JUDGE**

**SUIT NO. CCL/21/2001**

**ALEXANDER SAKA ANSONG == PLAINTIFF/RESPONDENT**

**VS**

**1. AMA DANKWA == DEFENDANT/APPLICANT**

**2. SASU**

---

---

I have heard the submissions of both counsel for the Defendant/Applicant (Applicant) and the Plaintiff/Respondent (Respondent).

The instant prayer is for an order of the court to set aside the Writ of Possession issued by the court in March, 2022.

By a Motion on Notice filed on the 19<sup>th</sup> of September, 2022. Applicant itemized the following reasons for his above prayer.

- i. That the 1<sup>st</sup> Defendant/Applicant as well as others occupants of the House in dispute H/No. 17, Gye Nyame Street Taifa - Accra were not served with or notified of the application for leave to issue Writ of Possession.
- ii. That the application for leave in itself is incompetent. Applicant in paragraph 7 of the affidavit in support referred to Exhibit 'A'. (Motion on Notice for Writ of Possession). In moving the motion, he pointed to inconsistencies on the face of the document ie that the lawyer whose name was on the document and the lawyer's stamp are inconsistent. Applicant also referred to Exhibit 'B' attached in paragraph 11. The said document filed on the 11<sup>th</sup> of March, 2022 names His Honour Essandoh as the author of the Judgment delivered by the court in 2005. The judgment was delivered by His Lordship Anthony Oppong then sitting as an additional Circuit Court Judge, inconsistencies in the signature of the Solicitor for the Plaintiff and the law firm's stamp and the fact that the land in dispute was referred to as 'piece or parcel' of

land situate and lying at Dome Village Accra, without its proper description. (*The court noted however that the Applicant did not depose specifically to the above ascertions in paragraph 7 & 9 of the affidavit in support*).

- iii. That the date of Judgment 2005 and the date of execution is such a long time that it has caused inordinate delay in the matter.
- iv. That the execution which was levied took place a year after the application for leave for Writ of Possession to issue was granted and the above goes to the root and therefore the writ of the possession should be set aside.

Respondent on the 28-9-2022 and 21-10-2022 filed an affidavit in opposition and supporting affidavit respectively.

Respondent said pursuant to a Writ of Possession filed on 20<sup>th</sup> May, 2021 he sought leave for recovery of the portion of the land in dispute. (He attached exhibit 1 which is a copy of the application for Writ of Possession (Paragraph 6 of his affidavit in opposition refers).

Respondent stated that he attempted to serve the Applicant with that court process in vain (He attached a copy of the affidavit of non-service marked as exhibit 2).

Per paragraph 8 of the affidavit in opposition, I quote the Respondent stated *“That pursuant to a Motion Ex-parte the Respondent sought an order of this Honourable Court to serve the applicants herein with the Writ of Possession via Substituted Service. (Copy of the order for the Substituted Service is attached and marked as Exhibit ‘3’ and the affidavit of posting is marked as exhibit ‘4’).*

In response to Applicant’s ascertainment that the application for leave was incompetent, this court notes that, this application is an affidavit driven one. Any party seeking to introduce new facts must seek leave of the court to file supplementary affidavit. The court will therefore treat the above point (ii) as extraneous and disregard same.

See Order 20 r8 of C.I. 47 and the case of Ibrahim v Abubakari {2001-2002} 1 GLR 540.

Respondent in response to point 3, ie the fact that the date of judgment and date of execution has caused inordinate delay deposed that after judgment was given in 2005, the Applicant filed a Notice of Appeal in the year 2006 (Marked as Exhibit 5).

Subsequently Respondent claims Applicant went to sleep and the Respondent caused a search to be conducted as to whether the Applicants who were legally represented had filed their written submissions per the Rules of the Court of Appeal (Marked as exhibit 8).

Respondent stated further that Applicant's non-compliance under Order 20(1) of C.I. 19 led to the appeal being struck out and the original docket forwarded to this Honourable Court on 4<sup>th</sup> February, 2020 to enable execution to be carried out.

Finally in response to Applicant's ascertainment that execution which was levied took place a year after the application for leave for writ of Possession to issue was granted, Respondent pointed the court to Order 43 of C.I. 47 that parties can seek leave of the court to execute judgment before 12 years after judgment.

Counsel for the Respondent in his oral submission said irregularities itemized by the Applicant can be cured by Order 81 of C. I. 47, Counsel for Applicant however disagreed and stated that those irregularities go to the root and as a result the process should be set aside.

In reference to points 3 and 4 of Respondent's supporting affidavit which was properly disposed to, the court notes that service of the application for leave to issue a Writ of Possession was properly done, since notice for the Substituted Service was duly posted at the property in dispute House Number 17, Gye Nyame Street, Taifa.

Again as evidenced by several exhibits the delay from the date of judgment to the date of execution was not occasioned by the Respondent but through the various efforts of Applicant to halt the execution process.

Finally as the Applicant stated in his affidavit in support for an order to set aside the Writ of Possession that, the execution which was levied took place a year after the application for leave for Writ of Possession to issue was granted and the above goes to the root and therefore the Writ of Possession should be set aside, the court notes that when Judgment is not executed 12 years after it is given, the Judgment/Creditor will be barred from executing the Judgment. The court refers

to section 5(2) of the Limitation Act, 1972 (NRCD 54) which prohibits all actions brought upon a judgment after 12 years to be barred. This does not apply here.

As far as the court is concerned the Respondent has not taken any steps in this case which have led to non-compliance of the rules,

BY COURT: The court notes that the Writ of Possession was legitimately granted by the Honourable Court and the application to set it aside is misconceived.

The court awards costs of GH¢3,000.00 to the Plaintiff/Respondent. The court accordingly dismisses the application by Defendant/Applicant to set aside the Writ of Possession.

**(SGD)**

**H/H KIZITA NAA KOOWA QUARSHIE  
CIRCUIT COURT JUDGE**