

**IN THE CIRCUIT COURT OF GHANA HELD IN ACCRA ON MONDAY 3<sup>RD</sup>  
DAY OF APRIL, 2023 BEFORE HER HONOUR KIZITA NAA KOOWA  
QUARSHIE, CIRCUIT COURT JUDGE**

**CASE \_\_\_\_\_ NO. \_\_\_\_\_  
D9/19/2022**

**THE REPUBLIC**

**VS**

**CHRISTIAN KPAKPO ABOSSEY**

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**RULING**

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The applicant brings this application before the Honourable court to discharge the Bench Warrant issued against him on the 9<sup>th</sup> November, 2023 and to either dismiss the instant case against him or stay proceedings at the Circuit Court because there is a case pending before the Supreme Court for the determination of the allodial ownership on the land, the subject matter of this case.

The current case before this court is a criminal one, where the accused Christian Kpakpo Abossey is charged with causing unlawful damage contrary to section 172(1)(b) of the criminal code 1960 (Act 29).

The learned counsel for the Applicant in making his submission before the court based his argument on the fact that his client was not served with criminal summons and as such he cannot be deemed to have known what is before the court and the court to issue a Bench Warrant of a process that he has not been served with.

Again, he submitted that the present case has its root in a civil case currently before the Supreme Court on appeal as to the ownership of the allodial title of

the land which is the subject matter of the litigation which is purportedly occupied and owned by Applicant's grantors.

Counsel referred the court to paragraph 6 of the affidavit in opposition by the Attorney General where it is stated "*That the application is incompetent in law as separate applications ought to have been made by the applicant*".

The Attorney General in opposition to the applications above-mentioned submitted that the Accused was arrested and charged and granted police enquiry bail on the 11<sup>th</sup> of September 2020. That Accused jumped bail and therefore it is a ground for granting a Bench Warrant.

Learned counsel from Attorney General said the discharge of the Bench Warrant and dismissal of the case are two separate actions and that the applicant had not exhibited any exceptional circumstances for which the proceedings at this Circuit Court should be stayed pending the outcome of the appeal at the Supreme Court and same should be dismissed as frivolous.

The court will consider the above application which is competent in law and decide whether to grant all or dismiss the entire application or part of it based on its merits.

The law is clear on the service of summons Section 63(1) of the Criminal and other offences (Procedure) Act, 1960 and I quote. Section 63(1) "*A summons shall be served by a Police Officer or by an Officer of the Court issuing it or any other Public Officer, and shall if practicable, be served personally on the person summoned by delivering or tending to that person one of the duplicates of the summons*". Prosecution as noted by this court did not serve Accused with the Criminal summons though they had filed a case against the accused.

Again the law is clear as to the Issue of Warrant of Arrest.

Section 71(1) of the Criminal and Other Offences (Procedure) Act, 1960.

A warrant may be issued at any time before or after the time appointed in the summons for the appearance of the accused although a summons may have been issued.

A whatsapp conversation dated 4<sup>th</sup> December 2022 between the Prosecution and the Accused revealed the following:

*"Your case is fixed for Wednesday, 7/12/2022 at Circuit Court '4' kindly do well and attend or send someone to represent you"*

The above language is at best a request not a warning that Accused should come to court.

BY COURT: After listening to the submissions of counsel for the Accused Person and the Attorney General's representative and reading the supporting affidavit, this court notes that the issue of the Bench Warrant against the accused was wrongfully made by the court. The court makes an order to discharge the Bench Warrant issued against the accused person, Christian Kpakpo Abossey.

The application to dismiss the case or stay proceedings at this Circuit Court pending the determination of a civil case at the Supreme Court is premature at this juncture, as the case between the Republic and Christian Kpakpo Abossey has not properly commenced before this court, though Prosecution filed the charge sheet and facts on the 9<sup>th</sup> of June, 2022.

BY COURT: Prosecution is to take steps to serve Accused to enable court to take his plea. Counsel for the accused may subsequently file the said motion for stay of proceedings at this Circuit Court for the court's consideration.

**(SGD)**  
**H/H KIZITA NAA KOOWA QUARSHIE**  
**CIRCUIT COURT JUDGE**