

**IN THE CIRCUIT COURT HELD AT KWABENYA ON TUESDAY THE
20TH DAY OF NOVEMBER, 2023 BEFORE HER HONOUR MAWUSI
BEDJRAH, CIRCUIT JUDGE**

SUIT NO. A2/14/2021

SAMUEL K. ADOFO & ANOR

**PLAINTIFFS/JUDGMENT
CREDITORS**

VRS

**MEDI GHANA MICROFINANCE
LTD. & ANOR**

**DEFENDANTS/JUDGMENT
DEBTORS**

CLAIMANT

PRESENT

PLAINTIFFS REPRESENTED BY EDMOND ADUSEI

PRESENT

DEFENDANTS

ABSENT

COUNSEL FOR PLAINTIFFS/JUDGMENT CREDITORS

LIMANN A. MOHAMMED WITH CHRISTABEL MILLS

PRESENT

COUNSEL FOR CLAIMANT BEN ADEKANLA

PRESENT

RULING

1.0 Introduction

On the 9th day of November, 2021, this Court differently constituted entered judgment on admission against the Judgment Debtors in respect of the following reliefs as claimed by Plaintiffs/Judgment Creditors;

- a) An order for recovery of the principal sum of Three Hundred and One Thousand Five Hundred and Fifteen Ghana Cedis and Eighty-Seven Pesewas (Gh¢301,515.87)
- b) An order for recovery of the accrued interest of Twenty-Six Thousand, Seven Hundred and Fifty-Nine Ghana Cedis, Fifty-Two Pesewas (Gh¢ 26, 759.52) for the months of August, September and October, 2018 which was re-invested in October, 2018
- c) An order for recovery of interest on the outstanding amount stated in reliefs (a) and (b) above at the agreed interest rate of 35.5% from November, 2018 till the date of final payment.

Subsequently, Plaintiffs/Judgment Creditors claim for general damages for breach of contract and cost, including 10% of the outstanding amount in reliefs (a, b and c) as legal fees were set down for trial. Final judgment was delivered on 5th August, 2022, whereby the claim for general damages was dismissed and Plaintiffs/Judgment Creditors awarded cost of GH¢ 7000.00.

Plaintiffs/ Judgment Creditors took further steps to enter into execution of the judgment obtained, whereby house No. 2 situate at Babylon Street, Haatso with GPS No. GE-227-5540 was attached. This necessitated the filing of the Notice of Claim by Claimant on 17th February, 2023 and Notice of Dispute by Plaintiffs/Judgment Creditors, hereinafter referred to as Respondents, on 22nd February, 2023. The Claimant then filed substantive and supplementary affidavits in support of the Notice of Claim on 9th June, 2023 and 16th August, 2023, whilst Respondents also filed substantive and supplementary affidavits in opposition to the Notice of Claim on 27th June, 2023 and 31st August, 2023 respectively.

2.0 Issue

The issue for determination by this Court is whether or not the property attached in execution of this judgment, described as House No. 2 situate at Babylon Street, Haatso with GPS No. GE-227-5540, hereinafter referred to as “the property”, is a matrimonial property and as such, cannot be attached in satisfaction of the judgment debt.

Lawyers for Claimant and Respondents, at the hearing of the Notice of Claim on 19th September, 2023, agreed that this matter should be determined summarily on the affidavit evidence provided to the Court, in accordance with Order 44 Rule 13 (1) (a) of C.I. 47. After hearing the parties and adjourning the matter for ruling, Counsels for the parties were given the option to file written addresses, based on an oral application by Counsel for Respondents. Counsel for Respondents filed his written address on 29th October, 2023 whilst Counsel for Claimant filed his on 6th November, 2023. Both addresses have been considered in this ruling.

3.0 Burden Of Proof

Per sections 10 (1), 11 (1) and 14 of the Evidence Act, 1975, (Act 323), the burden of persuasion on proving the claim lies on the plaintiff. The standard of the burden is one of preponderance of probability. (Sections 11(4) and 12 (1) of Act 323). (See the case of **ADWUBENG V DOMFEH** [1997-98] 1 GLR 282).

The burden of proof in a civil case is that a party who raises an issue essential to the success of his case assumes the burden of discharging it on the balance of

probabilities or the preponderance of probabilities. This concept has been defined under section 12(2) of Act 323 as:

‘that degree of certainty of belief in the mind of the tribunal of fact or the court by which it is convinced that the existence of a fact is more probable than its non-existence’.

Clearly then, the Claimant who filed an interpleader and contends in this trial that the property in question was not the self-acquired property of the 2nd Defendant assumes both the burden of persuasion and the evidentiary burden, both being components of the burden of proof to demonstrate to the Court that indeed, he has an interest in the property.

4.0 The Evidence

The Claimant’s position is that he is the husband of Ms. Esther Oman, the 2nd Defendant/Judgment Debtor in the suit and that he got married to the 2nd Defendant under the ordinance on 8th July 2005, which marriage is blessed with three children. That sometime in 2010, he and the 2nd defendant acquired about a parcel of land at Haatso in order to secure a land upon which they could build their matrimonial home. That they acquired the land in question, in respect of which they obtained a lease and registered same. That he and 2nd Defendant jointly took possession of the parcel of land, constructed and completed their matrimonial home and they have lived in the said house at all times material to the filing of the instant Notice of Claim. That the 2nd Defendant is the Chief Executive Officer of the 1st Defendant and that the only involvement she had with the transaction leading to the judgment being executed against her is that she performed her official duty as the CEO of the 1st Defendant. Thus, the matrimonial property cannot be taken in execution of a debt he knows nothing about.

He exhibited the following documents to substantiate his claim;

- i. A copy of the marriage certificate of the Applicant and the 2nd Defendant- Exhibit ‘A’
- ii. A copy of the Deed of Lease in respect of the property, the subject matter of the application-Exhibit ‘B’
- iii. A copy of the Land Title Certificate in respect of the property-Exhibit ‘C’
- iv. Prudential Bank Account Statement for 2012 when the construction of the house was undertaken- Exhibit ‘D’

- v. Copies of some of the electricity bills for the properties bearing the Applicant's name-Exhibit 'E' series

Respondents' case is that the 2nd Defendant, represented by different lawyers, personally appeared sometime in Court during the pendency of the case and even on the day of the entry of the final judgment. That the property belongs solely to the 2nd Defendant as evidenced by Exhibits 'B' and 'C' and that the Claimant has no interest in same. Further, the Claimant has not provided any proof of his contribution to the acquisition of the land and the construction of the building. That 2nd Defendant owned 90% shares of the 1st Defendant Company, thus a majority shareholder of the company. Besides, the 2nd Defendant is a director, the alter ego and was the person who knew the Judgment Creditors and induced them to invest their funds in the 1st Judgment Debtor. Respondents also exhibited the following documents;

- i. A copy of the Writ of Summons and Statement of Claim-Exhibit '1'
- ii. A copy of the Judgment on Admission against the Judgment Debtors-Exhibit '2'
- iii. A copy of the Final Judgment entered against the Judgment Debtors-Exhibit '3'
- iv. A copy of a search results from the Office of the Registrar of Companies in respect of 1st Defendant-Exhibit '4'
- v. A copy of the ECG requirements for the new service supply-Exhibit '5'

5.0 Analysis of the Evidence and Application of the Law

A preliminary matter raised by Counsel for Respondents is that paragraphs 16 and 17 of the Claimant's supplementary affidavit filed on 16th August, 2023 are in breach of Order 20 Rule 9 of C.I 47. The said paragraphs are reproduced as follows;

"16. That the judgment against the 2nd Defendant/Judgment Debtor is Unlawful and same ought not to be allowed to stand by this Honourable Court"

17. That the Plaintiffs/Judgment Creditors, having contracted with the 1st Defendant/Judgment Debtor ought not to have allowed to unlawfully smuggle the 2nd Defendant/Judgment Debtor into the mix surreptitiously to achieve the aim of appropriating my matrimonial property."

Claimant, in the preceding paragraph, states that the 2nd Defendant is the Chief Executive Officer of the 1st Defendant and that the only involvement she had with the transaction leading to the judgment being executed against her is that she performed her official duty as the CEO of the 1st Defendant.

I have decided to ignore this statement about 2nd Defendant's only involvement in the transaction since the Claimant is a third party, so far as the operations of the company are concerned.

I have also noted that per Exhibit '1', the claim of the Plaintiffs/Respondents is against the 1st and 2nd Defendants jointly and severally. Per Exhibit '4' tendered by Respondents, 2nd Defendant is the majority shareholder of 1st Defendant Company, which has been registered as a limited liability company. I have further noted that 2nd Defendant was duly represented by lawyers in this matter and was served with the Court processes. 2nd Defendant was particularly present when judgment on admission and final judgment were granted against the Defendants. Thus, it is surprising that the Claimant would state that the judgment was unlawful and that the 2nd Defendant had been unlawfully smuggled into the mix surreptitiously. The judgment in this suit was lawfully obtained against the Defendants and can be enforced against either the 1st or 2nd defendant since they were sued jointly and severally.

What then is matrimonial property? Per section 16A (2) of the **INTESTATE SUCCESSION ACT, 1985 (P.N.D.C.L. 111)**, **matrimonial house means;**

(a) the house or premises occupied by the deceased and the surviving spouse, or the deceased and a surviving child or all of them, at the time of the death of the deceased, or

(b) any other self-acquired house of the deceased occupied by the surviving spouse or child or both at the time of the death of the deceased.

Also, as defined in the unreported case of **AKUA KUENYEHIA V NDK FINANCIAL SERVICES LTD**, suit No. BDC 43/12, per the judgment delivered on 18th February, 2014, "[M]arital property has been held by the courts to be property acquired jointly by the couple during the marriage and on the dissolution of the marriage, the court would order the properties to be shared equally between the parties irrespective of a party's contribution to the property".

Thus, it appears that issues related to matrimonial property would normally arise when a spouse dies or in instances of divorce. The situation before this Court is however one in which the marriage is subsisting.

As a way of proving his claim to the property, the Claimant relied on the exhibits annexed to his affidavits. It is necessary to examine the exhibits to determine if Claimant successfully discharged the burden cast upon him by law.

Exhibit 'A' is a marriage certificate in the names of Edward Kwaku Prah-Ashun and Esther Oman, who got married on 8th July, 2005. Meanwhile, the Claimant is Edward Vigil Prah-Ashun. Claimant did not produce any document to the effect that Edward Kwaku Prah-Ashun and Edward Vigil Prah-Ashun are the same persons. This notwithstanding, it may be worthwhile to consider the other exhibits produced to the Court.

By the admission of Ex B' into evidence, Claimant contends that he acquired a leasehold interest in the property with 2nd defendant in 2010 and proceeded to register same at the Land Title Registry, thus Exhibit 'C'. I have noted that Exhibit B has Nii Tetteh Kwao I as the Lessor and Esther Oman only as the lessee, with Vigil Edward Prah-Ashun as her witness. In the same vein, Exhibit 'C' is also in the name of 2nd Defendant, Esther Oman, alone. According to Claimant, he and 2nd Defendant jointly took possession of the land, constructed and completed their matrimonial home and have lived in the house at all times material to the filing of the instant Notice of Claim.

It is instructive to note that per Article 18 (1) of the 1992 Constitution, every person has the right to own property either alone or in association with others. Thus, even during the subsistence of a marriage, the parties could own property individually. (See the case of **FYNN V FYNN** [2012-2013] 1 SCGLR 727. This was equally applied in **GLOBAL INVESTMENT BANKERS LTD AND 2 OTHERS V BROOKS ASSET MANAGEMENT LTD AND 3 OTHERS**, where his Lordship Justice Eric Kyei Baffour, as he then was, stated that "clearly then it is only when there is dissolution of the marriage that a spouse can claim her contribution should be measured even though her name does not appear on the title of the property, in terms of her performance of household chores at home. It does not take away the other constitutional right of a spouse during the marriage to acquire property in her/his right and in her/his own name."

Further, per section 35 of the Evidence Act, 1975 (NRC 323), the owner of the legal title to property is presumed to be the owner of the full beneficial title."

Based on the above provisions and Exhibits 'B' and 'C' tendered by the Claimant, it appears to the Court that the property in question is solely owned by the 2nd Defendant, unless the Claimant is able to further substantiate his claim.

It may also be helpful to consider the principle of advancement at this stage. As stated in **HARRISON V GRAY, JNR.** [1979] GLR 330, "But within certain confines a presumption exists that property acquired by one person in the name of another raises an advancement in the absence of admissible rebuttable evidence in favour of the person in whose name the property was acquired.

Such situations appear to be circumscribed and include where (a) a parent acquires property in the name of his child or person for whom he or she stands in loco parentis and (b) husband acquires property in the name of the wife.”

This principle was equally applied in the recent case of **DAVID OKINE ANSAH & ANOR VRS. COMFORT ANSAH** [2022] 179 GML 668.

The above is another presumption that the Claimant must rebut, in order to establish his interest in the property.

The Claimant’s Exhibit ‘D’ is a bank statement generated for the period of 1st November, 2012 to 30th November, 2012, being an amount GH¢11,200.00 paid to Prash Ghana Limited for building materials. Also, in the said Exhibit ‘D’, Claimant made payment of GH¢10, 196.00 in favour of Raincoat Roof Systems. I have noted the payments made but I am unable to link them to specific payments made in respect of the property. Further, no additional information is provided to link the payments to Claimant’s claim of interest in the property. Per Exhibit ‘E’, Claimant states that the electricity bills for the property are all in his name and he has paid same religiously over the years. Exhibits ‘D’ and ‘E’ do not come across as substantial to rebut the presumption of ownership of the property by the 2nd Defendant alone.

6.0 Conclusion

Having attended to the evidence on record, I find that Claimant has not been able to prove that the subject matter of execution is a jointly owned property. I find that Claimant has not been able to rebut the presumption of ownership of the property solely by the 2nd Defendant. Claimant cannot seek refuge in sections 38 and 47 of the Land Act, 2020 (Act 1036) as the Court finds that the property was not jointly acquired during marriage. Accordingly, the application by Claimant is dismissed.

I award cost of ₵2000.00 against Claimant and in favour of Respondents.

Her Honour Mawusi Bedjrah
Circuit Judge