

**IN THE TDC DISTRICT COURT HELD AT TEMA ON THURSDAY, THE  
15<sup>TH</sup> DAY OF DECEMBER 2022 BEFORE HER HONOUR AKOSUA  
ANOKYEWAA ADJEPONG (MRS.), CIRCUIT COURT JUDGE, SITTING AS  
AN ADDITIONAL MAGISTRATE**

**SUIT \_\_\_\_\_ NO.  
A9/111/21**

1. PETER OTU -----  
PLAINTIFFS/RESPONDENTS

2. EUNICE OTU  
ALL OF H/NO. A/1, LASHIBI  
COMMUNITY 16, TEMA

VRS

REBECCA ADJORKOR ADJEI ----- DEFENDANT/  
APPLICANT  
COMMUNITY 18  
TEMA

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PARTIES: PRESENT

COUNSEL: VIVIENNE TETTEH, ESQ. FOR DEFENDANT/APPLICANT  
ABSENT MRS. SUSANA TETTEY HOLDING  
THE BRIEF OF MOHAMMED ATTAH, ESQ. FOR  
PLAINTIFFS/RESPONDENTS PRESENT

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**RULING ON MOTION ON NOTICE FOR STAY OF PROCEEDINGS**

On the 20<sup>th</sup> day of August 2021, the Plaintiffs/Respondents hereinafter called the Respondents caused a Writ of Summons to be issued in this Court against the Defendant claiming the following reliefs:

- a. An order directed to the Defendant to give vacant possession of a two (2) room self-contained apartment and a one (1) room self-contained apartment situated and being at Community 18, Tema respectively to the Plaintiff and cost.
- b. An order directed to the Defendant to account for properties of the late TEYE YOWETU she rented out for the past (10) years without recourse to them.
- c. Any other order(s) the Court may deem appropriate in favour of the Plaintiffs.

This ruling is in respect of an application filed on 22<sup>nd</sup> June 2022 by the Defendant/Applicant hereinafter called the Applicant through her lawyer for an order of this Court to stay proceedings pending the determination of a suit at the High Court.

In the affidavit of the Applicant herein in support of the motion, she stated that she is one of the stepmothers of the Respondents herein. That the Respondents and Mavis Gadugah obtained the Letters of Administration for her deceased husband's estate without her knowledge and consent. That she only got to know of same when she saw a copy attached to their Statement of Claim. The Applicant continued that as a widow with two under aged children with her deceased husband, it is her right to be one of the Applicants for the grant of the Letters of Administration to administer his estate. That she has filed a notice in the High Court directed at the Respondents to deposit the Letters of Administration in Court. That the depositing of the Letters of Administration is a condition precedent to instituting an action against the administrators for the

revocation of the grant of the Letters of Administration. She attached a copy of the notice to deposit the Letters of Administration in Court as exhibit '1'. That she has been advised that this action cannot proceed when a notice has been filed to deposit the Letters of Administration in Court and that proceedings ought to be stayed pending the determination of the action to revoke the grant of the Letters of Administration to the Respondents.

Counsel for the Applicant in her argument relied on the depositions in the affidavit in support of the motion and the exhibit. She further submitted that this case which is based on the Letters of Administration of the 1<sup>st</sup> Respondent ought to be stayed. That the outcome of the case before the High Court will affect the determination of this case.

In the affidavit in opposition to the motion deposed to by the 1<sup>st</sup> Respondent, he stated that this application is without merit and same should be dismissed as it is not supported by the Law, Case Law, the rules of Court or any other known procedure. That no special circumstance has been demonstrated and no irreparable damage will be caused. That there is no likelihood that the subject matter of the dispute might be irretrievably lost before the determination of the suit. He continued that there are other effective method or procedure for the Applicant to pursue her rights and that she can be compensated in cost in the unlikely event that she wins her case.

In his submission, Counsel for the Respondents opposed the application and relied on the averments in the affidavit in opposition filed on 27<sup>th</sup> July 2022. He argued that the Applicant is a 3<sup>rd</sup> wife so in terms of priority, one of the wives being the 1<sup>st</sup> wife is already joined as an administrator. That the Applicant was the one living with the man so the notice of the Letters of Administration was

posted at where she was living with the deceased husband as the 3<sup>rd</sup> wife therefore she had notice of the application for the Letters of Administration. Counsel for the Respondents continued that this application is only to delay the process and it has no merit so it should be dismissed.

Counsel for the Applicant responded on point of Law that the once the Letters of Administration is deposited at the High Court, the 1<sup>st</sup> Respondent does not have capacity since the Letters of Administration has issues before the High Court.

I have carefully read the motion and the affidavit in support with the annexure as well as the affidavit in opposition; and also listened to the submissions made by both counsel for the Applicant and the Respondents.

A careful perusal of the Writ of Summons issued by the Respondents herein indicates that they did not bring the substantive suit in their capacity as administrators but as beneficiaries of the estate of their deceased father. They are claiming vacant possession of the part of the said estate that was given to them as their share of their late father's estate which according to their claim is being occupied by the Applicant herein, among other reliefs.

From the affidavit of evidence before this Court in the instant application, the Applicant has issues with the Letters of Administration granted by the High Court in relation to the said estate and has therefore filed notice for the administrators to deposit same at the registry of the High Court. Counsel for the Respondents submitted that the Respondents did not come to this Court as administrators but as beneficiaries so if the Letters of Administration is deposited at the High Court, it does not affect their capacity as beneficiaries.

I am inclined to agree with the Respondents' Counsel on his submission that being beneficiaries, they still have capacity to bring the instant action notwithstanding the deposit of the Letters of Administration at the High Court. Given that the Respondents herein did not issue the Writ of Summons as administrators but as beneficiaries and the fact that they have a share in the estate of their late father, the instant action needs to be proceeded for them to prosecute their respective claims.

From the Statement of Claim accompanying the Writ of Summons issued by the Respondents herein, there appears to be a sharing of the properties in the said estate to the wives, children and family of the deceased. It is on the basis of this distribution of the properties in the said estate that the Respondents issued the Writ of Summons but the Applicant kept mute on that and rather is attacking the Letters of Administration that she was not made an Applicant to same. Meanwhile according to the Respondents, it is the family head of their deceased father who invited the entire family including all the wives and children of the deceased for the distribution of the said estate after the grant of Letters of Administration.

In the event that the Applicant succeeds in her action before the High Court against the administrators of the said estate, which one of them is the Respondent herein, it will not change the fact that the Respondents being beneficiaries are entitled to their fair share in the estate of their deceased father. Moreover, the other administrator of the said estate is not a party to the substantive suit before this Court and so it will be unfair to unduly delay the proceedings by staying same because the Applicant has issues with her not being

one of the administrators of the estate of her late husband as a 3<sup>rd</sup> wife with two minor children.

The Court of Appeal in the case of *Republic v. Committee of Enquiry; Ex parte R T Briscoe (Gh) Ltd [1976] 1 GLR 166, CA* stated that the discretion to grant a stay of proceedings may be exercised if there are special circumstances warranting it.

Similarly, in *Garrett v. Garrett [1991] 2 GLR 366, CA* it was held that in considering special circumstances, the fact that there was no likelihood that the subject matter of the dispute might be irretrievably lost before determination of the suit was sufficient to refuse an application for stay of proceedings.

The Applicant has not indicated any exceptional circumstances warranting the stay of proceedings. Moreover, I do not see how the subject matter of the dispute might be irretrievably lost by the end of the determination of the suit before the High Court, which will cause irreparable damage to the Applicant. This is because in the event that the Applicant wins the action before the High Court, she can retrieve the subject matter or be compensated in monetary terms.

Having carefully examined the affidavit in support of the motion together with the annexure as well as the affidavit in opposition; and having also heard the submissions made by both Counsel for the parties; I am convinced that the Applicant has not indicated any exceptional circumstances warranting the stay of proceedings.

From the foregoing reasons and relying on the authorities listed above, this instant application is hereby refused. I award costs of GH¢1,500.00 against the Applicant in favour of the Respondents.

**[SGD.]**  
**H/H AKOSUA A. ADJEPONG**  
**(MRS)**  
**CIRCUIT COURT JUDGE**  
**15<sup>TH</sup> DECEMBER 2022**