

IN THE DISTRICT COURT HELD AT SOMANYA ON TUESDAY THE 14TH DAY
OF NOVEMBER, 2023 BEFORE HIS WORSHIP MICHAEL DEREK OCLOO

SUIT NO. A1/14/17

ABDULAI SHAIBU

PLAINTIFF/APPLICANT

VRS

MADAM ETHEL BANAHENE

DEFENDANT/RESPONDENT

PARTIES – PRESENT

CHARLES BAWADUAH ESQ FOR THE PLAINTOFF/APPLICANT – PRESENT

PHILIP EDEM KUTSIENYO ESQ FOR DEFENDANT/RESPONDENT - PRESENT

RULING ON MOTION ON NOTICE FOR AN ORDER FOR SUBSTITUTION

The Plaintiff commenced this action against the Defendant for the following reliefs:

1. Declaration of title and ownership of all that piece or parcel of land situate, lying and being at Akutunya – Somanya and bounded as follows:
 - i. On one side of the property of Ashia.
 - ii. On another side by the property of AzinaOdonkor
 - iii. On one side by the property of the vendor
 - iv. On one side by the property of the vendor

2. Recovery of possession
3. General Damages
4. Perpetual injunction restraining the Defendant, her assigns, workmen, agents and privies from having anything to do with the disputed land.

Counsel for and on behalf of the Plaintiff/Applicant filed a motion on Notice for an order for the Substitution on the following grounds:

1. That the Plaintiff has passed on the Course of the determination of the instant matter.
2. That the Applicant is the rightful person in the family to substitute the deceased to enable the matter to proceed.
3. That the applicant is the personal representative of the deceased and is making the application in that capacity.

Counsel for and on behalf of the Defendant/Respondent stated the following in his affidavit in opposition:

1. That the Plaintiff/Applicant has not established any proper basis in law for the Applicant to be substituted in the stead of the Plaintiff.
2. That the deceased Plaintiff instituted the instant action as an administrator of the estate of the late MallamShaibu Ali.
3. That the Applicant is not the rightful person to substitute the deceased.

Order 1 r 1(2) provides as follows:

The Rules are to be interpreted and applied in a manner that helps to :

- a. Achieve steady and effective justice
- b. Avoid delays and unnecessary expense
- c. Ensure that as far as possible, all matter in dispute between the parties and completely, effectively and finally determined.

The Applicant stated that he is the personnel representative of the deceased and therefore he is the rightful person to substitute the deceased. The Defendant/Respondent on the other hand contends that the Applicant is not the rightful person to substitute the deceased. This means that the capacity of the Applicant is in contention.

Considering the fact that the instant suit commenced as for in April/2017 there is the need to avoid further delays and ensure that the substantive matter in dispute is completely and effectively determined.

I also take into consideration the fact that the Defendant/Respondent is at liberty to institute the right process to interrogate the capacity of the Applicant.

In this circumstance, I rely on the statute law cited above and grant the motion.

(SDG)

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MICHAEL DEREK OCLOO
DISTRICT MAGISTRATE
14TH NOVEMBER, 2023

