

**IN THE DISTRICT COURT HELD AT SOMANYA ON FRIDAY THE 17TH DAY
OF NOVEMEBR, 2023 BEFORE HIS WORSHIP MICHAEL DEREK OCLOO**

SUIT NO. A1/01/2022

MAKU KORBOE

PLAINTIFF/ RESPONDENT

VRS

MR KUDJOE

DEFENDANT/ APPLICANT

PARTIES – PRESENT

JUSTICE KINAKU SALLAH ESQ FOR DEFENDANT/ APPLICANT - PRESENT

**RULING ON MOTION ON NOTICE TO STRIKE OUT WRIT OF SUMMONS AND
STATEMENTS OF CLAIM FOR ABUSE OF COURT OR JUDICIAL PROCESS**

The Plaintiff commenced the instant action against the Defendant for the following reliefs;

1. An Order of the Court to restrain the Defendant from trespassing on the Plaintiff's property situate at Trom, Somanya.
2. Damages of GH¢ 5,000.00 for destroying the Plaintiff's security barrier.
3. Costs of litigation.

Counsel for and on behalf of the Defendant /Applicant filed a motion on notice to strike out the Writ of Summons and statement of Claim for abuse of the Court process or judicial process on the following grounds:

1. That the land the subject matter of this suit is the property of Kofi Batsa.
2. That Mrs. Veronica Akita (an administrator of the estate of Kofi Batsa) in a case instituted against the grantors of the Plaintiff's (Suit No. A1/04/2010) on portion of the land of Kofi Batsa successfully obtained Judgment.
3. That currently there is a pending suit no. C12/112/2016 before the High Court, Koforidua against both the grantors of the Plaintiff and the Plaintiff (who is the 4th Defendant) by Mrs. Veronica Akita touching on the Ownership of a large tract of land which the land the Plaintiff is claiming forms part of A copy each of the Writ of Summons and statement of claim counterclaim filed by the Plaintiff (who is the 4th Defendant) were attached and marked as Exhibit A and B.
4. That in view of the pending suit no. C12/112/2016 of the High Court, Koforidua and the counterclaim by the Plaintiff, filing of the instant suit constitutes abuse of the Court process.

The Plaintiff / Respondent stated the following in her affidavit in opposition:

1. That the suit pending at the High Court, Koforidua titled Suit No. C12/117/2016, Veronica Akita V Kwesitsu Amlalo & 7 others carries different reliefs from the instant suit. A copy of the Writ of Summons was attached and marked as Exhibit Mk 1.
2. The suit has travelled far where Locus inspection has been conducted in the presence of both parties in accordance with law.
3. That the Defendant/Applicant's motion is clearly an Act of Commission to delay the Court process and was also presented at a time when Counsel for the

Defendant has cross-examined the Plaintiff/Respondent who is at the concluding stage of Cross-examination of the Defendant.

The Plaintiff/Respondent did not challenge the fact that Suit No. C12/117/2016 is pending at the High Court, Koforidua. She maintained that the reliefs sought in the instant case is different from the one at the High Court but failed to recognize the fact that she is laying Claim to the land in issue at the District Court for which reason she is praying the Court for an Order to restrain the Defendant from trespassing on same. It is trite that when the same Subject Matter is being heard simultaneously at the lower and superior courts, the District Court would put its hearing on hold to await the outcome of the Superior Court. In the instant case, it has been established that the subject matter in the district Court forms part of a larger subject matter at the High Court, Koforidua. The two Courts are in different levels of jurisdiction and by extension the High Court is superior to the District Court. Furthermore, the lower Court has to put its hearing of the matter on hold to await the determination of the matter by the High Court to avoid multiplicity of proceedings as provided in Order 1r 2(d) of the District Court Rules, 2009 (CI. 59).

In these circumstances, I rely on the provisions in the statute law cited above and grant the motion in terms of awaiting the outcome of the High Court Case, Koforidua.

(SDG)

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MICHAEL DEREK OCLOO

DISTRICT MAGISTRATE

17TH NOVEMBER, 2023