

IN THE DISTRICT COURT HELD AT WEIJA, ACCRA ON WEDNESDAY THE 22ND
DAY OF MARCH, 2023 BEFORE HER WORSHIP RUBY NTIRI OPOKU (MRS),
DISTRICT MAGISTRATE

SUIT NO. G/WJ/DG/A1/2/23

KOW BAFFOE ESSILFIE

PLAINTIFF/RESPONDENT

VRS

1.HAJIA (BARAKA AWUDU

2.GIFTY BRUTU

3.AMA



DEFENDANTS

PARTIES:

PLAINTIFF IS PRESENT

DEFENDANTS ARE ABSENT BUT REPRESENTED BY CLINTON NII NAI
SACKEYFIO

REPRESENTATION:

KEVIN QUARTEY ESQ. HOLDING THE BRIEF OF FELIX QUARTEY ESQ. FOR THE
PLAINTIFF / RESPONDENT

KWASI OPPONG - DAMOAH ESQ FOR THE DEFENDANTS / APPLICANT

RULING

BACKGROUND

The plaintiff filed a Writ of Summons in the registry of this Court on 19th November 2022
for the following reliefs;

- a. A declaration that the defendants continuous stay on the land is unlawful
- b. An order of ejection and recovery of possession

- c. An order of perpetual injunction restraining the defendants, their assigns, workmen or anyone claiming through the defendants to be restrained from interfering with the property.

The Applicant filed a motion on notice for joinder on 28th November 2022 praying the court for an order to join the applicant to the suit as defendant pursuant to Order 9 rule 5(3) of the District Court Rules, 2009 (C.I. 59) which provides as follows;

“where before or at the hearing of a suit, a person who is not a party to the suit realises that the suit affects or is likely to affect that person’s interest, that person may apply to the Court to be joined either as a plaintiff or a defendant as appropriate.”

Learned Counsel for the applicant moved the motion for joinder of Clinton Nii Nai Sackeyfio who is applying on behalf of himself and three other siblings namely Emmanuella Naa Afaaley Sackeyfio, Daniella Naa Afaako Sackeyfio and Garbing Nii Sackeyfio. Counsel relied on all the averments contained in the affidavit in support of the motion.

Counsel submits that the applicant and his siblings were born to one George Nii Sackeyfio who died in the year 2006 having predeceased his mother, Madam Mavis Abbey (deceased) the owner of the property, the subject matter of this dispute.

Counsel submits further that the administrators of the Estate of Madam Mavis Abbey namely Madam Salome Nkrumah and Mr. James Abbey have dealt with the properties without vesting the properties in the beneficiaries particularly the children of George Nii Sackeyfio. According to Counsel for the applicant, the conduct of the administrators is an abuse of their fiduciary duties as administrators of the estate of Madam Mavis Abbey (deceased). Counsel adds that whilst the grandmother of the applicant was alive, the property the subject matter of this dispute was in the hands of the applicant and his

siblings and they have renovated same and rented it out to tenants who are the defendants in this suit.

Applicant prays the court to join him to the suit as a defendant to protect his interests and that of his siblings and for all matters in dispute to be completely and finally adjudicated upon.

In response to paragraph 7 of the affidavit in opposition, Counsel for the applicant invites the court to take notice of the Ga customary law which is to the effect that inheritance is patrilineal and as a result the argument of counsel for the respondent should not be countenanced by this court.

Learned Counsel for the respondent is vehemently opposed to the motion and submits that the present application is an attempt by the applicant to cause unnecessary delay and put the respondent to unwarranted expense.

Counsel submits further that because applicant's father predeceased the applicant's grandmother, he could not have inherited any interest in the subject matter which would have subsequently inured to the applicant herein.

Counsel referred the court to the case of *Nkua v Konadu & Boateng* [2009] SCGLR 134 and contended that without a vesting assent, a beneficiary cannot sue and be sued. He adds that the applicant did not attach any vesting assent or copies of letters of administration to the affidavit in support of the motion.

Counsel contends that in the absence of proof that following the demise of his grandmother, applicant has obtained letters of administration from the court and subsequently had the disputed property vested in him he was without capacity to join the suit as a defendant. Counsel relies heavily on the case of *Okwere (deceased) v Appenteng & Adoma* [2012] 1SCGLR 65.

Counsel further refers the court to section 11(1) of the Intestate Succession Act 1985 (P.N.D.C.L 111) and submits that where the estate is not survived by a spouse, a child or a parent, the estate shall devolve in accordance with customary law.

Counsel concludes by stating that the present case is a land matter and not an administration of Estate matter and as a result the submissions of counsel for the applicant have no bearing on the present matter.

He prays the court to dismiss the instant application for being unmeritorious and having no bearing on the subject matter of the suit.

Decision of the court

Upon considering the affidavit in support of the motion, the affidavit in opposition and the submissions of both counsel, the Court is of the considered opinion that the issue to be determined by this court is whether or not the present suit affects or is likely to affect the applicant's interest to warrant an order of joinder.

From the facts deposed to in the affidavit in support of the present application, the applicant and his siblings are the grandchildren of the intestate who is the owner of the property the subject matter of this dispute. The facts also show that the father of the applicant predeceased his grandmother and during the life time of their grandmother to the time of her death, the applicant and his siblings have depended financially on the rental proceeds from the property in dispute. The applicant prays to join the instant suit as a defendant to protect his interest as a beneficiary of the estate of his grandmother, same having been dealt with by the administrators without recourse to him and his siblings.

The questions that beg to be answered is whether or not the applicant is indeed a beneficiary of the estate of his grandmother, his father having predeceased her and if so, whether he is clothed with capacity to join the suit.

Section 16 of P.N.D.C.L 111 provides as follows;

“Where a child of the intestate who has predeceased the intestate is survived by a child who is the grandchild of the intestate, the grandchild is entitled, if that child is dependent on the intestate at the time of death to the whole or a portion of the estate which would otherwise have devolved to the parent if that child had not predeceased the intestate.”

Applying section 16 of P.N.D.C.L 111 to the facts, I am of the considered view that the applicant and his siblings being the grandchildren of the intestate have a legal interest in the property the subject matter of this dispute and as a result are competent to either acting together or any of them acting on behalf of the others to defend this suit.

Again the challenge to the capacity of the applicant to defend the action on the basis of non-procurement of Letters of Administration or Vesting Assent has been laid to rest in the case of *Adisa Boya v Mohammed* (Substituted by Mohammed & Mujaab [2017-2018] 1 SCGLR 997 where the Supreme Court held that the defendants being children of their intestate father and having interest in the property were competent to defend the action and even mount an action for declaration of title even though they had not sought and obtained Letters of Administration.

The Supreme Court affirmed its decision in the *Boya* case cited supra in *Bandoh v Appeagyei-Gyamfi & Anor*[2017-2018] 1 SCGLR 299 through *Marful- Sau JSC* (as he then was) as follows;

“I wish to add that the above proposition of law is only fair and equitable in view of the interest created in estate for beneficiary children under the Intestate Succession Act,

PNDCL 111. I therefore entirely agree with the legal proposition enunciated by Gbadegbe JSC and hold that even in this appeal, the appellant being a beneficiary child was a competent party notwithstanding the fact that she had no Letters of Administration.

Having dealt with the technicalities arising from the affidavit in opposition, I am of the considered view that for all matters in dispute to be completely, effectively and finally determined to avoid multiplicity of suits, the applicant is to be joined to the suit as a defendant.

Accordingly the application succeeds and same is **GRANTED**.

Consequently, let the applicant be joined to the suit as a defendant. Plaintiff is ordered to amend the writ of summons and serve same on all defendants.

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H/W RUBY NTIRI OPOKU (MRS.)
(DISTRICT MAGISTRATE)