IN THE HIGH COURT OF JUSTICE GHANA (GENERAL JURISDICTION COURT 4) HELD IN ACCRA ON THE FRIDAY THE 11TH DAY OF NOVEMBER, 2022 BEFORE HER LADYSHIP OLIVIA OBENG OWUSU, (MRS.) J.

SUIT NO. GJ/0738/2022

AMPOFO ADUSEI :: PLAINTIFF/RESPONDENT

H/NO B11.2 SOWUTUOM, ACCRA

VRS.

GIDEON AGBEMABIASE :: DEFENDANT/APPLICANT

H/NO. VOLTA STREET, TESHIE–NUNGUA ESTATES, ACCRA

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R U L I N G

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This is an Application by the Defendant/Applicant (hereafter referred to as the Defendant) to dismiss the Writ of Summons and Statement of Claim as an abuse of Court process under the inherent jurisdiction of the Court.

The main grounds for this Application can be found in paragraphs 4, 5, 6, 11, 19, 20, 21, 22, 25, 27, 29 and 36 of the affidavit in support, and I do, therefore, reproduce same for easy reference:

They read as follows:

> "4. *That the instant suit initiated by the Plaintiff/ Respondent (hereinafter referred to as "the Respondent") is frivolous, vexatious and an abuse of the Court process and therefore same ought to be set aside.*

5. *That by an Amended Writ of Summons and Statement of Claim dated 4th June, 2014 the Applicant commenced an action before this Honourable Court (differently constituted) against the Respondent and two others in a suit with Suit No: FAL/100/14 entitled* ***GIDEON AGBEMABIESE VRS NATIONAL INVESTMENT BANK, ISAAC ALABI AND AMPOFO ADUSEI*** *in respect of the disputed parcel of land upon which the respondent herein erected a huge structure. Attached and marked as Exhibit* ***"GA1"*** *is a copy of the amended Writ of Summons and Statement of Claim.*

6. *That on the 27th of March, 2017 the High Court presided over by His Lordship Justice Anthony Oppong entered Judgment in favour of the Applicant herein (Plaintiff therein) and ordered that the Applicant be paid compensation being twice the current economic market value of the land in dispute as well as other monetary compensation in the form of general damages and costs. Attached and marked as Exhibit* ***"GA 2"*** *is a copy of the Judgment of the High Court dated 27th March, 2017.*

11. *That after the issuance of the said Writ of Fi Fa the Respondent resorted to the mounting of various Applications targeted at forestalling and frustrating the enforcement of the Judgment obtained by the Applicant herein.*

19. *That having failed at all six (6) attempts at stultifying the Applicant's enforcement of a duly obtained Judgment, the Respondent has initiated the instant action as a further attempt to deny the Applicant the enforcement of a Judgment duly obtained.*

20. *That the instant action commenced by the Respondent in respect of the same subject matter constitutes an abuse of the Court process as the matter has already been determined by a Court of co-ordinate jurisdiction.*

21. *That the allegation of fraud raised by the Respondent in this action is nothing but an afterthought employed as a ruse to deny the Applicant the enjoyment of the fruits of his Judgment.*

22. *That the Respondent was enjoined in the previous suit to present all facts and evidence before the Court and indeed had every opportunity to present his entire case before the Court for all aspects of the case to be fully determined.*

25. *That the Respondent has failed to plead facts or make averments to the effect that the applicant has either admitted to making false misrepresentations or has acted in such a way that his claim to the land in dispute could be nothing but fraudulent.*

27. *That the pleadings and particulars set out in the Writ of Summons issued by the Respondent does not disclose any cause of action based on fraud.*

29. *That the particulars of fraud as pleaded by the Respondent in paragraphs 9 and 10 of the Statement of Claim does not on the face of it show that the High Court was deceived into giving impugned Judgment by means of a false case known to be false or not believed to be true or made recklessly without any knowledge of the subject.*

36. *That the instant action initiated by the Respondent has been done in bad faith and is a flagrant abuse of the Court process and*

therefore the Applicant urges this Honourable Court to dismiss the instant Writ of Summons and Statement of Claim."

To this the Plaintiff/Respondent (hereafter referred to as the Plaintiff) deposed to the following facts, in his affidavit in opposition amongst others:

"4. *That this is a different matter from the suit mounted by the Defendant/Applicant herein.*

5. *That the Plaintiff/Respondent contrary to the Defendant /Applicant's assertion has a solid case against the Defendant/Applicant herein quite distinct from the earlier matter.*

7. *That Defendant/Applicant had his Judgment against the Plaintiff/Respondent during the pendency of the cases involving both the Plaintiff and the Defendant herein grantors. See Exhibit 'MA2'*

8. That it was after the Judgment in the suit mounted by the Defendant/Applicant that Plaintiff/Respondent herein was told by his grantors the Nungua People that they have won Judgment against the Defendant/Applicant grantors Teshie People. See Exhibit MA3 series.

9. That I am advised by Counsel and verily believe same to be true that the nemo dat non habet principle applies in this matter and the Plaintiff/Respondent has rightfully invoked the said principle in his case.

10. *That I am advised by Counsel verily believe same to be true that Defendant/Applicant's remedy is against his grantors who do not have land anymore and not the Plaintiff/Respondent.*

11. *That I am advised by Counsel and verily believe same to be true that Plaintiff/Respondent's case is not an abuse of the process of the Court as he cannot allow the Defendant/Applicant to unjustly enrich himself when he no longer has land.*

12. *That Plaintiff/Respondent was told by his grantors that Defendant/Applicant ever approached them to regularize his land documents for him but they declined.*

13. *That in the interest of justice the application herein be dismissed as Defendant/Applicant's grantors no longer own the land in question."*

Counsel on both sides advanced arguments in support of their respective positions as disclosed in the affidavits. Learned Counsel for the Defendant in his written submissions argued as follows:

"1. The instant action is predicated on a matter which has been fully and conclusively determined by a Court of co-ordinate jurisdiction in favour of the Defendant. This suit by the Plaintiff alleging fraud in the procurement of the previous judgment between parties is a red herring and ruse to stultify the Defendant's right to enjoy the fruits of his Judgment. The instant action commenced by the Plaintiff is frivolous and vexatious and *constitutes an abuse of Court process and therefore ought to be dismissed.*

2. *The instant case is on all fours with the case of* ***OSEI–ANSONG & PASSION INTERNATIONAL SCHOOL VRS GHANA AIRPORTS CO. LTD [2013–2014] 1 SCGLR 25*** *and therefore the court should apply all the principles in the case and dismiss the instant action commenced by the Plaintiff as an abuse of Court process. The Plaintiff alleges that after the High Court delivered Judgment in Suit No FAL/100/2014 in favour of the Defendant his grantors told him that they had obtained Judgment against the Defendant's grantors. On this basis the Plaintiff alleges that the Defendant obtained the Judgment in Suit No. FAL/100/2014 by fraud and wants same set aside by the Court. The Plaintiff has failed to plead facts or make averments to the effect that the Defendant has either admitted to making false misrepresentations or has acted in such a way that his claim to the land in dispute could be nothing but fraudulent. Also nothing on the face of the particulars of fraud stated by the Plaintiff shows that the High Court in Suit No. FAL/100/2014 was deceived into giving the impugned Judgment by means of false facts or facts not believed to be true or made recklessly without any knowledge of the subject.*

3. *The Respondent's basis for alleging fraud is his claim of having learned of a Judgment in favour of his grantor's against the Defendant's grantor. He alleges fraud because he claims that the Defendant ought to have known his grantor's title was being fiercely contested. The position of the law is that the plaintiff himself being aware of such a contest of titles between his grantor and the Applicant's grantor ought to have made that fact known to the Court. The Plaintiff was duty bound to present all aspects of his case in Suit No. FAL/100/2014 as stated under the rule in* ***HENDERSON VRS HENDERSON (1843) 3 HARE 100****.*

4. *The Plaintiff has been unable to make any positive claim to the land in question from a cursory reading of the pleadings as found in his Statement of Claim. Significantly the Plaintiff's Exhibit 'MA3' which are two recent Court of Appeal decisions are in no way traceable or connected to his grantors. Per the terms of the Plaintiff's pleadings the Judgment per Exhibit MA3 had not been delivered and could not have been in the contemplation and knowledge of the Defendant for him to misrepresent same.*

The submissions of Learned Counsel for the Plaintiff may be summed up thus:

"1. The Plaintiff's action is not only hinged on fraud but on the principle of nemo dat quod non habet as well as unjust enrichment. The Defendant's grantors have no land to alienate to him and if he is allowed to either possess the land or go into execution against the Plaintiff that will constitute unjust enrichment.

2. *The Defendant committed fraud because he went to the grantors of the Plaintiff to regularize his purchase from Ashong Mlitse Family of Odaite Tse We. The Defendant hid the fact that he went to the grantors of the Plaintiff for regularization in the case he had with him. The Defendant has not filed a Statement of Defence so as to ascertain if Defendant disputes his claim of fraud.*

3. *The Defendant was aware of the case between his grantors and that of the Plaintiff. Exhibit MA3 is a Court of Appeal judgment which presupposes that there is a High Court Judgment which*

commenced before the Defendant alienated the land to the Plaintiff.

4. *It is not the case that the Defendant had his grant before Judgment was obtained against his grantors. Therefore the case of Olivia Anim (suing per her lawful attorney Diana Mensah Bonsu) vs William Dzandzi Civil Appeal No. J4/10/2018 dated 6th June, 2019 will not apply.*

5. *The instant suit is not Res judicata as the parties are not the same. The earlier suit had several defendants with the Plaintiff herein as 3rd Defendant but this current action involves him and the Plaintiff.*

6. *The Defendant's motion should be dismissed and the Plaintiff given the opportunity to prove his case.*

The issue, which has to be determined by the Court, is whether the Plaintiff's Claim should be dismissed on the pleadings or whether it is necessary that the case should be heard on its merits.

Abuse of Process according *to the* ***OSBORN'S CONCISE LAW DICTIONARY (8TH ED) EDITED BY LESLIE RUTHERFORD AND SHEILA BONE*** is *"...A frivolous or vexatious action as e.g. setting up a case which has already been decided by competent Court…"*

In ***BARRONS DICTIONARY OF LEGAL TERMS (4TH ED) BY STEPHEN H. GIFIS*** abuse of process is defined as *"improper use of legal process."*

Under Order 11 Rule 18 of the High Court (Civil Procedure) Rules, 2004 (C.I. 47) the Court in the exercise of its discretionary power is permitted to dismiss summarily an action which it considers an abuse of the Court's process.

However before coming to this conclusion the Court is enjoined to consider whether the case before it is one fit and proper to be so decided summarily.

The practice under the inherent jurisdiction of the Court is well established. Speaking about the exercise of the power under its inherent jurisdiction in ***TIAH VRS JOHNSON AND OTHERS [1964] GLR 661*** Djabanor J said:

> *"The inherent jurisdiction is not confined to cases where the abuse is manifest from the pleadings, but may be exercised where the facts are proved by affidavit which show an abuse of the process of the Court".*

Order 11 rule 18(1) (d) of C.I 47 reads:

> *"The Court may at any stage of the proceedings order any pleading or anything in any pleading to be struck out on the grounds that…. (d) it is otherwise an abuse of the process of the Court.".*

Learned Counsel for the Plaintiff has appealed to the Court to invoke the nemo dat quod non habet principle to the Plaintiff's advantage. He submits that the Plaintiff's action is not only hinged on fraud and makes the point that the Defendant's grantors had no land to alienate to the Defendant. I think the law on the point is clear. The instant action alleges fraud against the Defendant. Where a Court is called upon to set aside a Judgment on grounds of fraud the case should be limited to only the allegation of fraud and nothing else. ***OKWEI***

MENSAH (DECD) (ACTING BY) ADUMUAH OKWEI VRS LARYEA (DECD) (ACTING BY) ASHIETEYE LARYEA & ANOTHER [2011] 1 SCGLR 317, is authority for the principle that where a Judgment is attacked for fraud, fraud only must be in issue. In that case it was held that a party seeking to set aside a Judgment on grounds of fraud must plead fraud and no other facts.

Similarly in ***BOBIE VRS 21ST CENTURY CO LTD & OTHERS [2017–2020] 2 SCGLR 429*** the Supreme Court held that in a case where a person seeks to set aside a Judgment on grounds of fraud, fraud should be the only issue to be tried.

The Plaintiff has raised the issue of fraud in relation to the Judgment delivered by this Court on 27th March, 2017. The Plaintiffs action will therefore be limited to the fraud complained of. There is no denying the fact that a Judgment obtained by fraud is in the eyes of the Court no Judgment, as it is not founded on the intrinsic merits of the case. Where the validity of a previous Judgment as in the instant case is put in issue either on grounds of fraud or lack of jurisdiction, the previous Judgment could not be a bar to the subsequent proceedings. See the case of ***AGYILIHA AND ANOTHER VRS TAYEE [1975] 1 GLR 433.***

It is undisputed that the Defendant in this case instituted an action previous to this against the Plaintiff (then 3rd Defendant) in respect of this same land in dispute. Clearly the Judgment in Suit No: FAL/100/2014 on 27th March, 2017 in favour of the Defendant against the Plaintiff decided, the matter in controversy between the parties on its merits. The question which fell for determination in Suit No: FAL/100/14 entitled ***GIDEON AGBEMABIESE VRS NATIONAL INVESTMENT BANK, ISAAC ALABI AND AMPOFO ADUSEI*** in respect of the disputed parcel of land was, as between the Defendant and the Plaintiff who was the true owner of the land in dispute. On 27th March, 2017 the High Court

presided over by Oppong J. (as he then was) gave the Defendant Judgment in the following terms:

> *"In the circumstances I will enter Judgment for Plaintiff against 3rd defendant and declare Plaintiff as owner of the land, the description of which is clearly set out in the endorsement on the Writ of Summons and the Statement of Claim."*

This was a determination on the merits by a Court of competent jurisdiction on the issue of ownership of the said plot of land as between the Plaintiff and the Defendant in Suit No: FAL/100/2014. Where a final Judgment had been given in an action, a Court would have no jurisdiction and it would not permit the same parties to re-open the subject-matter of the litigation in respect of matters decided in the previous action. That is the principle applied in the case of ***IN RE KWABENG STOOL; KARIKARI VRS ABABIO II [2001–2002] SCGLR 515***. There it was contended that if an action is brought and the merits of the questions are determined between the parties and a final Judgment is obtained by either, the parties are precluded and cannot canvass the same question again in another action.

It must be stressed that in applications of this nature the Court, in coming to a decision one way or the other, ought to limit itself to matters which have been disclosed in the pleadings. The Court has therefore perused the Statement of Claim carefully. In accordance with Order 11 Rule 12 (1) (a) of C.I. 47 the Plaintiff has given particulars of the alleged fraud as follows:

> ***"FRAUD***
>
> *Particulars:*
>
> *i. Defendant knew and/ought to know that his grantors had no capacity to alienate the land to him.*

ii. *That Defendant under the principle of nemo dat quod non habet has no land.*

iii. *That defendant ever went to the plaintiff's grantors for regularization of his land which included the small portion that fell into Plaintiff's land and therefore knew that his grantors have no land.*

iv. *That Defendant knew and/or ought to have known his grantors title or interest in the land in dispute was hotly contested in a Court of law by Plaintiff's grantors.*

v. *That Defendant knows or ought to know that Plaintiff's grantors now have Judgment against Defendant's grantors".*

Here the Plaintiff's position, as I understand it, is that the Defendant knew or had reason to know, that his grantors had no title or interest in the land in dispute.

Has the Plaintiff established a cause of action based on fraud?
In ***LETANG VRS COOPER 2 ALL ER [1964] 929*** Diplock L.J. defined *"cause of action"* as "simply a factual situation the existence of which entitles one person to obtain from the court a remedy against another person".

I also propose to go the case of ***OSEI–ANSONG & PASSION INTERNATIONAL SCHOOL VRS GHANA AIRPORTS CO. LTD [2013–2014]*** **1 SCGLR 25** for guidance. At page 36 of this case the legal position was lucidly explained as follows:

> *"...the Plaintiffs need not plead evidence but it was important for them to have pleaded facts or made averments that had the potential of showing that the Defendant had either admitted that it had deliberately made false representations or had acted in such a way that its claim to the land in dispute could be nothing but fraudulent. The pleadings should show that the Court was deceived into giving the impugned judgment by means of false facts known to be false or not to be believed to be true, or made recklessly without any knowledge of the subject…"*

Reading the pleadings it is the considered opinion of the Court that the pleadings do not disclose any cause of action based on fraud. The Plaintiff has not pleaded facts or made averments which show that the High Court in Suit No. FAL/100/2014 was deceived into giving the impugned Judgment by means of false facts which the Defendant knew to be false or had no belief in its truth. The Plaintiff had the opportunity to present his entire case before the Court in Suit No. FAL/100/2014 for all aspects of the case to be fully determined but chose, for reasons of his own, to stay out of Court. In the case of ***SASU VRS AMUA–SEKYI AND ANOTHER [2003–2004] SCGLR 742*** it was contended, as it is in this case that the Appellant in his counterclaim should have brought forth his full case. It was also held in that case that the rule in Henderson vrs Henderson (supra) would not permit him to present his case piece meal by bringing a subsequent case seeking to set aside the Court of Appeal's Judgment for fraud. Consequently, the Court held that the Appellants conduct in bringing a fresh action amounted to abuse of judicial process.

Similar views were expressed in the case of ***OSEI –ANSONG & PASSION INTERNATIONAL SCHOOL VRS GHANA AIRPORTS CO. LTD*** (Supra). In that case the Court held that in the absence of special circumstances parties could not return to Court to advance arguments, claims or defences, which they could have put forward for decision on the first, occasion but failed to raise.

Applying the principles of the law as enunciated in the above cases in the absence of special circumstances the Plaintiff cannot return to advance claims which he could have put forward for decision on the first occasion but failed to raise.

The Defendant is entitled to enjoy the fruits of a Judgment properly obtained and to allow the present action to stand would be an abuse of process. As stated in the case of ***DZOTEPE VRS HAHORMENE III (NO. 2) [1984–86] 1 G.L.R. 294*** "*the fact that courts abhor fraud should not make them insensitive to the just claims of victorious parties.*"

This is a proper case for the Court to summarily prevent abuse of its process. The Application to dismiss the Writ of Summons and Statement of Claim is granted as prayed. There will be costs of Ten Thousand Ghana Cedis (GH¢10,000.00) for the Defendant/Applicant against the Plaintiff.

(SGD.)

H/L OLIVIA OBENG OWUSU (MRS.)

JUSTICE OF THE HIGH COURT

PARTIES:

PLAINTIFF/RESPONDENT REPRESENTED BY WILLIAM BORTEY PRESENT

DEFENDANT/APPLICANT PRESENT

COUNSEL:

ISAAC AIDOO ESQ., FOR PLAINTIFF/RESPONDENT PRESENT

ELSIE GYAN ESQ., HOLDING BRIEF FOR PHILIP ADDISON ESQ., FOR DEENDANT/APPLICANT PRESENT

CASES REFERRED TO:

1. TIAH VRS JOHNSON AND OTHERS [1964] GLR 661

2. OKWEI MENSAH (DECD) (ACTING BY) ADUMUAH OKWEI VRS LARYEA (DECD) (ACTING BY) ASHIETEYE LARYEA & ANOTHER [2011] 1 SCGLR 317

3. AGYILIHA AND ANOTHER VRS TAYEE [1975] 1 GLR 433

4. IN RE KWABENG STOOL; KARIKARI VRS ABABIO II [2001–2002] SCGLR 515

5. LETANG VRS COOPER 2 ALL ER [1964] 929

6. OSEI–ANSONG & PASSION INTERNATIONAL SCHOOL VRS GHANA AIRPORTS CO. LTD [2013–2014] 1 SCGLR 25

7. SASU VRS AMUA-SEKYI AND ANOTHER [2003–2004] SCGLR 742

8. DZOTEPE VRS HAHORMENE III (NO.2) [1984–86] 1 G.L.R. 294 AT PAGE

9. BOBIE VRS 21ST CENTURY CO LTD & OTHERS [2017– 2020] 2 SCGLR 429