
SUIT NO. GJ/0049/2023

... **PLAINTIFFS**

VRS.

... DEFENDANT

This is a Ruling on an application brought for and on behalf of the Defendant/Applicant hereinafter referred to as the Applicant to dismiss Plaintiffs/Respondents hereinafter referred to as Respondents' Writ of Summons and Statement of Claim.

The brief facts of the case are that on 31st October, 2022 the Applicant filed an Application to dismiss the Respondents' Writ of Summons and Statement of Claim against the Applicant. The Respondents on 8th February, 2023 filed an Affidavit in Opposition to the Applicant's Application to dismiss the suit.

THE APPLICANT'S CASE

The Applicant says that he earlier instituted an action against 3rd Respondent in a suit entitled Richard Ayawli vrs. Wise Mensah (Suit No. GJ/948/19) on 15th March, 2019 claiming the reliefs endorsed therein. The 3rd Respondent entered appearance to Suit No. GJ/948/19 and subsequently filed a Statement of Defence. However, on 4th June, 2019, the Court entered summary judgment in favour of the Applicant. After service of entry of judgment and issuance of Writ of *Fieri Facias*, the property which 3rd Respondent used as security for a facility which culminated in the judgment of 4th June, 2019 was attached by the Deputy Sheriff as part of the execution processes which is the property Respondents claims belongs to one Stephen Kudjo Kpai.

Applicant avers that on 5th October, 2020 the said Stephen Kudjo Kpai filed a Notice of Claim which was disputed to as a result of which the Court ordered the parties to appear on 1st December 2020 for determination of the issue.

The Applicant states that on 27th January 2021, the Court dismissed the claim of the said Stephen Kudjo Kpai and barred all persons claiming through Stephen Kudjo Kpai from prosecuting his claim against the Registrar and all persons claiming under the Registrar.

The Applicant further states that on 1st March, 2021, Stephen Kudjo Kpai filed an application to relist his interpleader and for extension of time to file affidavit of interest to which an affidavit in opposition was filed on 11th May, 2021 and the application was dismissed.

The Applicant avers that on 7th April 2021, 3rd Respondent filed an application for an order to stay execution of the judgment and for leave to attempt settlement which was opposed and the court on 9th June 2021 dismissed the application.

The Applicant states that the instant suit is therefore not only frivolous and vexatious but a clear abuse of the processes of this Honourable Court and ought to be dismissed.

The Applicant further states that from the processes filed by Respondents there is no cause of action in favour of Respondents against Applicant.

The Applicant avers that from the facts stated in the Statement of Claim, even if true cannot entitle Respondents to the reliefs sought in their Writ of Summons and Statement of Claim.

The Applicant says that the appropriate person that this suit should be directed at is the Deputy Sheriff and not Applicant.

The Applicant further says that the procedure adopted by Respondents by issuing a Writ of Summons is unwarranted in law and that the appropriate procedure was to file a notice of claim and that where a procedure is provided for a particular issue, that procedure is the only procedure to be followed.

THE RESPONDENTS 'CASE

By way of response to the Application the Respondents filed an Affidavit in Opposition and say that the application is not mounted on any sound legal foundation.

The Respondents say that the disputed property and or the property attached in execution is at all material time the self-acquired property of the late Stephen Kudjo Kpai, a message the 4th Respondent confided in the Applicant, and the Applicant agreeing on same before using the said property as security for the dealings between the 4th Respondent and the Applicant.

The Respondents further say that the late Stephen Kudjo Kpai filed a Notice of Claim upon being notified of the attachment of his property in execution.

The Respondents aver that the Court's ruling cannot operate as estoppel, stopping and or restraining the said Stephen Kudjo Kpai and the administrators of his estate from taking further action such as the instant writ to protect the property of the late Stephen Kudjo Kpai.

The Respondents further say that the writ before this Honourable Court is proper and contains triable issues or cause of action especially when it is known to the Applicant that the property attached does not belong to the 4th Respondent but he elected to use same as security in a private transaction between him and the 4th Respondent.

The Respondents state that where a party alleges that a writ discloses no cause of action the rules do not require affidavit evidence thereby rendering the application defective as same fails to invoke the jurisdiction of the Court.

The Respondents further state that the practice has always been that where a claimant's application fails such as the one mentioned by the Applicant, the rules permits the Respondents to issue out a writ of summons against the Applicant and nobody else.

The Respondents avers that the said bar mentioned by the Applicant does not operate as an estoppel restraining the Respondents from seeking redress in the nature of a writ of summons.

The Respondents say that the application is procedurally incompetent, legally weak and have failed to invoke the jurisdiction of the Court and same must be dismissed.

THE LAW AND THIS CASE

I have read the application, the supporting affidavit and the affidavit in opposition. I have also given consideration to the written submissions filed by counsel for and against the grant or otherwise of the application. I am of the considered view that the main issue to be determined in order to settle the matter before me is “Whether or not this Court has jurisdiction to grant the reliefs sought”?

Even though the issue of jurisdiction was not stated as one of the grounds in this application, it can be considered since it is trite that the issue of jurisdiction can be raised and determined at any time even on appeal. In the case of **GHANA BAR ASSOCIATION VS. ATTORNEY-GENERAL AND ANOTHER (ABBAN CASE) [2003-2004] SCGLR 250** where the Plaintiff sought the removal of the Chief Justice but did not specifically say so, the Supreme Court held at page 266 of the report per Bamford-Addo J.S.C that:

"Jurisdiction is simply the power of a court to hear and determine a cause or matter brought before it, lack of which would render any decision taken or order made null and void and of no effect. If jurisdiction is granted a court by statute, then what is already specified therein determines the nature and extent of that jurisdiction so granted that court which cannot be extended or modified. Where jurisdiction is wrongly assumed, however, all proceedings taken would be a nullity. For this reason, it is the court's duty to act only within the jurisdiction with which it has been clothed".

Her Ladyship then went on to state the criteria for a court to consider when its jurisdiction is challenged as follows:

"In deciding the issue of jurisdiction, matters to take into consideration include the statute which invests jurisdiction, as well as the true nature of the claim

having regard to the pleadings, issues and reliefs sought, or the actual effect of such reliefs, regardless of the words used or the manner in which the claim and reliefs are couched."

Kpegah JSC at page 285 of the report also held that when one is considering whether a properly constituted court has jurisdiction or not, one cannot resolve this issue without necessarily relating it to; "a. the parties to the dispute, i.e. whether the court has jurisdiction over them; b. the subject matter of the dispute- whether it is one which falls within its jurisdiction; c. the relief being sought, i.e. whether the said court can grant the relief the plaintiff is seeking; and lastly d. territorial limitations".

A careful study of the reliefs in this case shows quite clearly that the Respondents are seeking to have the ruling in Exhibits TH3 and TH4 set aside or that this Court should pronounce on the validity of the rulings or proceedings. Although, a court of coordinate jurisdiction can set aside an order, ruling or proceedings of another court based on fraud and other factors (which have not been pleaded in this case) it has been held that a court of coordinate jurisdiction cannot set aside proceedings of another court which acted within its jurisdiction.

Thus in **REPUBLIC VS. HIGH COURT, KUMASI EX PARTE ASARE-ADJEI (ANIN MENSAH INTERESTED PARTY) [2007-2008] SCGLR 914**, where one High Court set aside an order of another High Court earlier made, the Supreme Court quashed by certiorari the ruling that set aside the earlier order on the basis that the second judge did not have jurisdiction to set aside the order of the first judge since the first judge acted within jurisdiction.

In **PUNJABI BROTHERS VS. NAMIH [1962] 2 GLR 46**, SC the Supreme Court per Adumua-Bossman J.S.C. held at page 49 that:

"I apprehend that although it is open to a party against whom judgment has been given to institute a fresh action to claim the setting aside of that judgment on the ground of fraud and or misrepresentation... it does not appear to be open to him, without first getting the judgment set aside, and while it is still subsisting, of full force and effect, to ask another court of co-ordinate jurisdiction in another case in which other issues are raised, to pronounce a judgment of a superior court, which has not been set aside, to be null and void. The law seems to be clearly settled that so long as a judgment of a superior court remains undischarged and of full force and effect, it is not competent to another court of coordinate jurisdiction to pronounce against its validity, however palpably erroneous it may appear to be".

The question therefore is can the Respondents legally call upon this Court to review or set aside the proceedings in another High Court on the excuse that Stephen Kudjo Kpai could not prosecute his interpleader claim? I do not think so.

It is my view that the target in the instant case is the rulings and the processes leading to same in Suit No. INT/14/2021 but the reliefs are caved in a manner not to make them appear so and as held by Her Ladyship Justice Bamford-Addo in the Abban case (supra), the actual effect regardless of the reliefs sought should be closely scrutinised.

I am of the considered opinion that this Court has no jurisdiction to grant the reliefs in the manner endorsed on the Writ of Summons and therefore the instant action ought to be dismissed and is accordingly dismissed.

Costs of GH¢5,000.00 is awarded in favour of the Applicant against the Respondents.

(SGD)

**JUSTICE RICHARD APIETU
(HIGH COURT JUDGE)**

COUNSEL

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ALIDU MOHAMMED FOR THE DEFENDANT/APPLICANT