

IN THE HIGH COURT OF JUSTICE, GHANA LAND DIVISION (COURT 11), LAW
COURT COMPLEX HELD IN ACCRA ON MONDAY, THE 27TH DAY OF MARCH,
2023BEFORE HIS LORDSHIP JUSTICE AMOS WUNTAH WUNI

SUIT NO. LD/0619/2020

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|---|---|----------------------------|
| 1. TRUSTEES OF THE CHURCH OF THE
LORD ALADURA | } | ... PLAINTIFFS/RESPONDENTS |
| 2. PROPHETESS HILDA AIDOO
ALL OF HOUSE NO. G527/5
HILL STREET, NIMA ACCRA | | |

VRS

TRUSTEES OF THE REDEEMED CHURCHDEFENDANT/APPLICANT
OF THE LORD INTERNATIONAL

RULING

By a motion on notice for Joinder filed on 28th November 2022, the Defendant/Applicant (hereafter referred to as the Applicant) supplicates this Honorable Court for an order to join one **SAMPSON OWUSU** to the suit as the 2nd Defendant.

The Rules of Court relative to applications for Joinder are very explicit and admit of no ambiguity whatsoever. They provide under Order 4 Rule 5(2)(b) of the High Court (Civil Procedure) Rules, 2004 (C.I. 47) as follows:

5. (2) At any stage of proceedings the Court may on such terms as it thinks just either of its own motion or on application.

(b) order any person who ought to have been joined as a party or whose presence before the Court is necessary to ensure that all matters in dispute in the proceedings are effectively and completely determined and adjudicated upon to be added as a party.

Therefore, the Court has power, after a suit has been filed, to join any person who **ought to have been joined as a party** in the first instance OR to join any person whose presence before the Court is necessary or required to ensure that the entire dispute is “*effectively and completely determined and adjudicated upon*”.

Consequently, in applications for Joinder, *if and only if*, a person’s presence before the Court is necessary to ensure that the dispute is effectively and completely determined and adjudicated upon, that person may be added as a party. This position of the law is supported by an impressive array of authorities including:

- Ampratwum Manufacturing Co. Ltd v DIC [2009] SCGLR 692
- Ussher v Darko [1977] 1 GLR 476 C/A
- Bonsu v Bonsu [1971] 2 GLR 242 per Taylor, J (as he then was)
- Coleman v Shang [1959] GLR 390 C/A and
- Howden v Yorkshire Miners’ Association [1903] 1 KB 308

It is the case of the Applicant that the property which is the subject of this suit, is the property of Niiman Divine Healing Temple and was acquired through the Trustees of the Church. The registered document evidencing the ownership of the land by the

Niiman Divine Healing Temple is attached to the affidavit in support of the application as Exhibit BA1.

Counsel for the Applicant contends that, the Court of Appeal found in an earlier suit involving the 2nd Respondent and the Applicant herein that title to the land in dispute is indeed vested in the Trustees of the Niiman Divine Healing Temple. Therefore, the ownership of the property as far as the parties herein are concerned, is not in doubt at all.

It is also contended by Counsel for the Applicant that the last Trustee of the Niiman Divine Healing Temple was one Apostle Solomon Kwaku Krow (who is now deceased). Upon the death of the said Apostle Solomon Kwaku Krow, his brother, Sampson Owusu was appointed as his heir/customary successor. The Applicant strongly argues that, by reason of that appointment, the Trust Property and the Office of Trusteeship passed to the

said Sampson Owusu, the heir/customary successor of the last surviving Trustee. It is therefore the Applicant's prayer that **SAMPSON OWUSU** be joined to this action so that all issues in controversy would be brought before this honorable Court for effective adjudication to avoid a multiplicity of suits affecting the property in dispute. Counsel for the Applicant contends that, it will be a serious dereliction of duty for Sampson Owusu to stand by nonchalantly and allow the property in dispute to be litigated upon by persons who do not have any proprietary interest in it.

However, by their affidavit in opposition, the Respondents argue that the instant application should not be granted because there is no evidence that **SAMPSON OWUSU** is indeed the heir/customary successor of the late Apostle Solomon Kwaku Krow. Regrettably, the Respondents do not indicate, who according to them, is the heir/customary successor of Apostle Solomon Kwaku Krow.

In rebuttal, Counsel for the Applicant argues that, the appointment of one as an heir/customary successor, just like a customary grant of land, is not required to be in writing for it to be exhibited before this Court because our customary law jurisprudence posits that *“customary law knows no writing”*. Therefore, to the learned Counsel for the Applicant, the opposition of the Respondents regarding the Applicant’s failure to produce a document to substantiate the appointment of Sampson Owusu as the heir/customary successor of Apostle Solomon Kwaku Krow is a matter which may be properly raised in Respondents’ pleadings after the said **SAMPSON OWUSU** is joined to the suit. Counsel further argues that, the Court *suo motu* has power to order a Joinder if the Court finds, as in this case, that the parties are litigating over property which does not belong to any of them – in which case, the true owner ought to be brought into the matter. The learned Counsel for the Applicant therefore respectfully urges this Court to grant the application.

In opposing the application for Joinder, Counsel for the Respondents relied on all the depositions set out in their affidavit in opposition filed on 19th December, 2022.

It is argued by the learned Counsel that the Church no longer exists as a corporate entity and for that matter, the Applicant cannot by itself apply to join this suit. To the Respondents, the only reason given by the Applicant in support of the application is the allegation, without proof, that the said **SAMPSON OWUSU** is the heir/customary successor of Apostle Solomon Kwaku Krow who was, in his lifetime, a Trustee of the Niiman Divine Healing Temple. Counsel for the Respondents strongly contends that the submission by Counsel for the Applicant that the Respondents have to prove to the Court who the customary successor of Apostle Solomon Kwaku Krow is, cannot be grounded in law as it is trite that *“the burden of the proof rests on the person who affirms, not the one who denies”* – this is rendered in classical Latin as: *Ei incumbit probatio qui dicit, non qui negat*. [See: Black’s Law Dictionary (10th Deluxe Edition) by Brian A. Garner].

From the totality of the affidavit evidence and the processes on the Court's docket, as well as the *viva voce* submissions of both Counsel, it is my respectful view that the instant application for an Order of Joinder has merit and is therefore granted as prayed.

Accordingly, it is ordered that the said **SAMPSON OWUSU** be and is hereby joined to the suit as 2nd Defendant. All processes filed so far are to be served on him and the title of the Writ is to be amended within ten (10) days.

Suit to take its normal course.

(SGD.)

AMOS WUNTAH WUNI (J)

JUSTICE OF THE HIGH COURT

COUNSEL:

S. K. AMOAH FOR THE DEFENDANT/APPLICANT

EVELYN JOYCE ACQUAH FOR KWEKU Y. PAINTSIL FOR
PLAINTIFFS/RESPONDENTS