

IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT OF JUSTICE  
COMMERCIAL DIVISION, HELD IN ACCRA ON THURSDAY, THE 24<sup>TH</sup> DAY OF  
AUGUST, 2023 BEFORE HIS LORDSHIP FRANCIS OBIRI 'J'.

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SUIT NO. CM/MISC/0624/2023

UNIVERSAL MERCHANT BANK LIMITED - APPLICANT

Vs

NDK FINANCIAL SERVICES LIMITED- RESPONDENT

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**RULING**

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The court is informed, that there is a case pending before this court between the parties herein in respect of the same properties the Applicant herein is seeking to realise in this case.

The court is also informed, that the said case was filed before this present case was filed. The court will therefore order counsel for the parties to address it as to whether this case has properly invoked the jurisdiction of the court because of the pendency of the other case which was filed earlier in time.

It is settled, that the law permits the court to draw the attention of parties in litigation to legal issues not addressed by the parties, but which the court considers paramount in the consideration of the issues before the court, and invite submissions from both parties on

the said issues, if the court intends to rely on such issues in the determination of the case before it.

See: **SAVIOUR CHURCH OF GHANA v ABRAHAM KWAKU ADUSEI AND OTHERS [2021] 174 GMJ 1 SC**

Again, the court can also raise or consider a legal issue which might have escaped the lawyers or the parties in the case if it is fundamental to the determination of the case. It is trite law, that a court is not bound by misconceptions in legal proceedings by counsel.

See **GIHOC REFRIGERATION AND HOUSEHOLD PRODUCTS LIMITED (NO. 1) V HANNA ASSI [2002-2008] 1 SCGLR 1**

If the issues stated above are in the affirmative, then the second case may raise the issue of *lis alibi pendens* in which one of the cases must be stayed or dismissed.

See: **IN RE PARAMOUNT STOOL OF BAMIANKOR; EFIA IV AND ANOTHER V TAIBA II AND OTHERS [2010] SCGLR 37**

**IN RE APPLICATION BY NEW PATRIOTIC PARTY AND PEOPLES CONVENTION PARTY (APPLICANTS); TEHN-ADDY V ELECTORAL COMMISSION AND ANOTHER [1996-1997] SCGLR 216**

The case is therefore adjourned to 30<sup>th</sup> August, 2023 for counsel for both parties to address the court in respect of the propriety of this present application as against the case which is already pending between the parties before this court. I order accordingly.

**SGD.**

**FRANCIS OBIRI**

**(JUSTICE OF THE HIGH COURT)**

## COUNSEL

ERNEST GEMADZIE FOR THE APPLICANT

ANDREW APPAU OBENG FOR THE RESPONDENT

## AUTHORITIES

1. SAVIOUR CHURCH OF GHANA v ABRAHAM KWAKU ADUSEI AND OTHERS [2021] 174 GMJ 1 SC
2. GIHOC REFRIGERATION AND HOUSEHOLD PRODUCTS LIMITED (NO. 1) V HANNA ASSI [2002-2008] 1 SCGLR 1
3. IN RE PARAMOUNT STOOL OF BAMIANKOR; EFIA IV AND ANOTHER V TAIBA II AND OTHERS [2010] SCGLR 37
4. IN RE APPLICATION BY NEW PATRIOTIC PARTY AND PEOPLES CONVENTION PARTY (APPLICANTS); TEHN-ADDY V ELECTORAL COMMISSION AND ANOTHER [1996-1997] SCGLR 216