

IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT OF JUSTICE  
(LAND DIVISION) ACCRA HELD ON WEDNESDAY THE 19<sup>TH</sup> DAY OF JULY, 2023  
BEFORE HER LADYSHIP JUSTICE JENNIFER MYERS AHMED (MRS), JUSTICE OF  
THE HIGH COURT.

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SUIT NO: LD/0433/2023

1. SAMUEL KWARTEKWEI : PLAINTIFFS  
2. JUDITH QUARTEY  
3. REGINARD QUARTEY

VRS

ROSE CRAH : DEFENDANTS

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PLAINTIFF: 1<sup>st</sup> Plaintiff present

DEFENDANT: Absent

COUNSEL FOR PLAINTIFFS: Mr. Philemon Pierson-Prah with  
Emmanuel Kenu being led by  
Christopher King-Present

COUNSEL FOR DEFENDANT: Mr. Peprah Berko Agyeman-Present

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### RULING

In Noas Holding Inc vrs. GCB Ltd. [2011]

29 CMJ 1 at page 14, Datse JSC stated the following

“... the principle of abuse of process that is discernable has been postulated on the facts that the matters in controversy have been determined by a court of competent jurisdiction between the same parties and basically on the same subject matter that it

would therefore be an abuse of the court to allow a suitor to an open ended opportunity to be litigating and re-litigating over and over again in respect of the same issue which has over the period and in previous decisions had been decided against him.”

In the light of these erudite words from Dotse JSC, can it be said, as submitted by the defendant applicant herein, that the instant writ of summons and statement of claim filed by the Plaintiff on the 15<sup>th</sup> of May 2023 constitute an abuse of court process?

The defendant entered conditional appearance on the 6/6/23 and filed a motion on notice on that same day, praying for an order striking out the pleadings upon the ground that it is an abuse of this court’s process.

According to the applicant, the Plaintiff had sued he and one Susuana Quartey (now deceased) by a writ issued on the 24<sup>th</sup> of June 2019 the High Court differently constituted in suit no. LD/0916/2019 per the same reliefs he seeks in this court. after a flurry of activities which included the filing of a motion on notice to strike out the writ for non-compliance and the appointment of a surveyor to prepare a composite plan, he finally filed his statement of defence and counterclaim on the 22<sup>nd</sup> of August 2022.

Subsequently, the Plaintiff herein, discontinued the action before the matter could go to trial on the 20<sup>th</sup> April 2023.and as he, the applicant is desirous of prosecuting his counterclaim in suit No. LD/0916/2019, it is an “abuse of the court’s process for the same parties to litigate over the same subject matter in two (different) courts.

To the defendant applicant I will say this, that the Plaintiff herein was under order 17 rule 2 (1) of C.I. 47 well with his rights to have discontinued his action for which the defendant was adequately compensated, according to the Plaintiff’s counsel and cost of GH¢5,000.00.

I will also draw the attention of the defendant applicant beauty of consolidation of proceedings order 31 rule 2. At present, there are two suits pending which are of the same nature and requiring a determination of similar issues between the same parties in relation to the same subject matter. This the interest of justice will be best served if the two suits, LD/0916/2019 and LD/0433/2023 are consolidated into one.

This instead of acceding to the request of the defendant applicant herein to strike out the pleadings, I rather find that the Plaintiff has not abused the court's process and there is no justification for striking out the instant suit merely because the defendant applicant has a counterclaim pending before another court which is yet to be determined.

Application is refused. Suit to take its normal course. Cost of GH¢1,500.00 in plaintiff's favor.

**(SGD.)**  
**JENNIFER ANNE MYERS AHMED J, (MRS.)**  
**JUSTICE OF THE HIGH COURT**