

IN THE SUPERIOR COURT OF JUDICATURE. IN THE HIGH COURT
OF JUSTICE (COMMERCIAL DIVISION) ACCRA HELD ON FRIDAY
THE 31ST DAY OF MARCH, 2023 BEFORE HER LADYSHIP JUSTICE
AKUA SARPOMAA AMOAH (MRS.)

SUIT NO. CM/MISC/0138/2023

BA TIMBER TRUST FOUNDATION ---- PLAINTIFF

VRS

THE REGISTRAR GENERAL ---- DEFENDANT

PARTIES: - ABSENT

COUNSEL: EMMANUEL YEBOAH GYAN HOLDING BRIEF FOR
BOBBY BANSON FOR APPLICANT/RESPONDENT –
PRESENT

BARBARA ASARE MENSAH LED BY OBENG MANU
FOR 2ND RESPONDENT/APPLICANT – PRESENT

**NO LEGAL REPRESENTATION FOR 1ST
RESPONDENT**

J U D G M E N T

The present motion seeks an Order setting aside / dismissing the Applicant/Respondent's (Respondent) Originating Motion filed on the 21st of November, 2022 on grounds of the same being an abuse of process.

The 2nd Respondent /Applicant (Applicant) says it has been served with an Originating Notice of Motion filed on the 21st of November, 2022 seeking an order for this Court directed at the Registrar General to appoint an Inspector to investigate the affairs of the 2nd Respondent.

Applicant says the Respondent had caused the same application to be filed before this Court (differently constituted) on the 10th day of August, 2020.

However upon being served with that Application, the Applicant applied for the Chief Justice to determine the forum convenience of the matter on grounds that the Applicant herein being resident in the Bono Region and being the person to be affected by the Orders of the Court, reasonably considered it more convenient for the Motion to be heard and determined in that region as all its witnesses were resident there and it was in that Region that any documents required to prove its case could be easily obtained.

The Court after hearing the arguments of both Counsel granted Applicant's prayer and referred the matter to the Honorable Chief Justice for his decision on same.

The Respondent however appealed that reference but before the said appeal could be heard, the Respondent filed a notice of withdrawal of Appeal on the 8th day of February 2022 as evidenced by *Exhibit ABTS 3*.

Applicant again went ahead to file a Notice of Withdrawal of the substantive Application pending before this Court. .

Now before the Notice of Withdrawal of Appeal could be determined by the court of Appeal, the same Respondent went ahead on the 12th of May, 2022 to cause the same application as that filed on the 10th of August, 2020 to be filed in this Court. The Application of the 12th of May, 2022 was however, on application of the Applicant herein to set-aside by this Court differently constituted on the 5th of July, 2022.

Following the setting aside of the said Application, the Respondent caused a Hearing Notice to be issued for the Applicant to appear for its Notice of Withdrawal of the Appeal to be pronounced upon. Pursuant to which the Appeal was struck out as withdrawn.

Upon the striking out of the Appeal, the Applicant filed a Notice of Discontinuance on the 14th day of October, 2022 purporting to discontinue the substantive action filed on the 10th of August ,2020 at the High Court.

Applicant contends that the Respondents conduct constitutes a grave abuse of the processes of this Court and is all aimed at overreaching the Orders of this Court in respect of the 1st Originating motion in which this Court on the 28th of January, 2021 referred the matter to the Chief Justice to determine the forum convenient.

Applicant further contends that the purported discontinuance of the 1st Motion by the Applicant was incompetent and of no effect given the stage it had reached.

To that extent, the same, according to Applicant remains pending which renders the instant Motion filed on the 21st of November, 2022 incompetent.

The Application was vehemently opposed as misconceived.

Now, the record shows that the Applicant herein on the 10th day of August, 2020 filed a Motion similar to the present which was referred to His Lordship the Chief Justice to pronounce on the issue of the forum convenience.

Before the same could be determined, the Applicant proceeded to withdraw the said Application and to file another on the 12th day of May, 2022. This motion was set aside but another filed on the 21st day of November, 2022.

It is important to note that the categories of abuse of process are by law not closed. It covers every situation where a party resorts to the improper use

of the legal machinery to oppress or vex an adversary or interfere with the due administration of justice.

In shedding light on the term “abuse of process’, the learned authors of *Bullen & Leake & Jacobs [18th Edition]* make the following observation at *page 148* of their book;

“The term “abuse of process of the court” is a term of great significance. it connotes that the process of the court must be carried out properly honestly and in good faith; and it means that the court will not allow its function as a court of law to be misused but will in a proper case, prevent its machinery from being used as a means of vexation or oppression in the process of litigation. It follows that where an abuse of process has taken place, the intervention of the court by the stay or even dismissal of proceedings “although it should not be lightly done, yet it may often be required by the very essence of justice to be done”

It follows therefore that a Court has expansive powers to intervene and to halt any process or proceeding that is found to be an abuse of its processes or legal machinery. As noted earlier , the circumstances under which a Court may exercise such is clearly not exhaustive and may be invoked in every circumstance where a litigant resorts to the improper use of the judicial process.

I think Counsel for Applicant takes a simplistic view of the case at hand when he argues that the Respondent ought to be put to an election of which

of the actions it intends to pursue. In my opinion, the facts of the present case go beyond two suits merely pending in the same Court.

Clearly, the first Motion remained pending as far as the Honourable Chief Justice was yet to make a decision on the appropriate forum. The gripe of the Application which I consider valid is with the course taken by the Respondent to persistently harass, oppress and dribble the Applicant with a multiplicity of motions when one would have sufficed. This constitutes an abuse of process which should not be countenanced by this Court. Putting the Respondent to his election in my view, will amount to this Court overlooking the malafide use of its machinery for the collateral purpose of overreaching the Applicant.

It is well-settled on principle and a long list of legal authorities that a Court has the inherent power to terminate an action which constitutes an abuse of process. Under such circumstances the proper order will be to dismiss the action. See the case of *IN RE WEST COAST DYEING INDUSTRY LTD; ADAMS AND ANOTHER v TANDOH* [1984-85]2 GLR 561.

I am further supported by Nigerian Case of *LOKPOBIRI v OGOLA* [2016] 2 NWLR PART 1499 which I consider to be of persuasive value in this jurisdiction. In that case the court stated that;

“The Order to be made where a suit is an abuse of Court process is to dismiss the process which constitutes the abuse”.

It is on the basis of the foregoing that I shall dismiss the Respondent's present originating motion to appoint inspectors to investigate the affairs of the Applicant

I award the Respondent/Applicant costs of *Five Thousand Ghana Cedis (GH¢ 5,000.00.)*

**AKUA SARPOMAA AMOAH (MRS)
JUSTICE OF THE HIGH COURT**

Cases referred to:

***IN RE WEST COAST DYEING INDUSTRY LTD; ADAMS AND ANOTHER
v TANDOH [1984-85]2 GLR 561.***

LOKPOBIRI v OGOLA [2016] 2 NWLR PART 1499

Statute referred to:

Stated edition:

Bullen & Leake & Jacobs [18th Edition]