

IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT OF JUSTICE,
LAW COURT COMPLEX, PROBATE AND L/A DIVISION, COURT '1' HELD IN
ACCRA ON 29TH DAY OF NOVEMBER 2023, BEFORE HER LADYSHIP EUDORA
CHRISTINA DADSON, J.

SUIT NO. PA 256/2019

1. DAWUDA OLA BELLO	}	
2. MOHAMMED JIBRIL AJADI	}	
SUING FOR THEMSELVES AND ON BEHALF	}	PLAINTIFFS
OF 8 CHILDREN OF THE LATE AFOBABI BELLO	}	APPLICANTS
ALL OF H/NO 39/10, NIMA, ACCRA		

VRS

MUNIRATU BELLO ALAKE	}	
PER HER LAWFUL ATTORNEY MUTIA	}	DEFENDANTS
SHAKIRA DAWODU	}	RESPONDENTS
H/NO 39/10, NIMA, ACCRA	}	

PARTIES: **PLAINTIFF PRESENT**
 DEFENDANT PRESENT

COUNSEL: **SAMUEL TSATSU TAMAKLOE FOR THE DEFENDANT**
 PRESENT

RULING

[1] Introduction

1. The Plaintiff's/Applicant filed an application for stay of execution of the Judgment of 20th December 2019 pending appeal and same was granted on 17th June 2020.
2. The Defendant/Applicant on 11th May 2023 filed a motion on notice to set aside the stay of execution. The gravamen of the 9-paragraph affidavit in support was that after the grant of the stay of execution the Plaintiff/Respondent have neglected or failed to pursue their appeal. The Defendant/Applicant concludes that the Plaintiff/Respondent is not desirous of pursuing the appeal.
3. Counsel for the Plaintiff/Respondent filed an affidavit in opposition on 23rd May 2023 and the crux of his depositions was that contrary to the deposition in paragraph 6 of the affidavit in support of the instant application the 1st Plaintiff/Respondent aggressively pursued the Appeal until his demise. Counsel states that following the demise of the 1st Plaintiff he caused the family to be informed of the need for a substitution of the 1st Plaintiff to be effected without which the Appeal cannot progress and though a reminder has been sent to the family he was yet to receive notice of the identity of the person to substitute 1st Plaintiff.

Counsel therefore prays as follows: *"That in the circumstances I pray that the instant application be refused in order to afford the family of the 1st Plaintiff the opportunity to effect the necessary substitution to enable the Appeal progress."*

4. Counsel for the Defendant/Applicant filed the same application on 20th October 2023. That application is struck out.

[2] Court's Opinion and analysis

5. In Counsel for Respondent's affidavit in opposition the Court is not informed of the date the 1st Plaintiff died. The 1st Plaintiff may have died but on record the Plaintiffs are three. What prevents the other Plaintiffs from pursuing the appeal? The Defendant has had judgment in her favour since 20th December 2019 and yet due to the Appeal and subsequent Stay of Execution she granted cannot enjoy the fruits of her litigation. Is the Defendant/Applicant to wait whilst the family of the Plaintiff take forever to nominate a substitute? I do not think so.
6. In moving the present application the Court was informed that the 1st Plaintiff died in the year 2020. If Counsel for Plaintiffs were minded to substitute the 1st Plaintiff, they had three years to effect the substitution. It is for this reason that the motion filed on 11th May 2023 is granted.
7. The Stay of Execution granted on 17th June 2020 is hereby set aside. No order as to costs.

(SGD.)

H/L EUDORA CHRISTINA DADSON (MRS.)

(JUSTICE OF THE HIGH COURT)