

IN THE SUPERIOR COURT OF JUDICATURE IN THE HIGH COURT OF
JUSTICE HELD IN TEMA ON MONDAY THE 17TH DAY OF JULY 2023 BEFORE
HER LADYSHIP JUSTICE RITA AGYEMAN-BUDU (MRS)

Time:11:35 am

SUIT NO. E1/07/2022

LAWRENCE KOJO CUORNOOH - PLAIN

VRS

ISAAC AGUDEY - DEFENDANT

PARTIES:

Plaintiff - Present

Defendant - Present

LEGAL REPRESENTATION

Mr. Edward Sam Crabbe for the Plaintiff/Applicant- Present.

Mr. Eric Asuman-Adu for the Defendant/Respondent- Present

RULING

This Ruling is in respect of a Motion on Notice for an Order for the production of documents for inspection.

This was filed for and on behalf of Plaintiff/Applicant herein **Lawrence Kojo Cuornooh** by his Counsel.

The mainstay of this Application is that Defendant/Respondent **Isaac Agudey** in his Witness Statement made reference and attached a Scanned Copy of Land Certificate dated 17th January, 2023 as Exhibit 1.

But the Defendant failed to attach the document which the Tettegah Family and Vedzi Azango Family relied on to obtain the Land Certificate. Plaintiff is by this Application requesting that Defendant is ordered to produce to Court the original copy of the aforementioned Land Certificate and the document evidencing the grant whether a Lease, Statutory Declaration Assignment and any other.

Plaintiff/Applicant is also praying that the Defendant/Respondent be ordered by this Court to produce a Consent Judgment he made reference to in his Witness Statement which is:

Nene Angmetey Kplivie

Vrs

Nene Nanor Kokotey IV

Suit No. E/59/201.

Plaintiff/Applicant contends that Defendant has in his possession custody or power of these documents which relate to issues in the cause or matter. Counsel relies on Order 21 rule 10 of C.I 47.

Counsel for Defendant/Respondent did not file any Affidavit in Opposition in respect of this Application. Counsel however sought leave of Court to respond to this viva voce by way of a preliminary legal objection which the Court granted.

In opposing the instant Application, Counsel for Defendant/Respondent also refers to **Order 21 rule 10**, **Order 21 rule 1(1)**, **Order 21 rule 2** and contends that since Pleadings have closed and directions already taken, it means Plaintiff has waived his right.

Counsel for Defendant/Respondent further contends that Order 21 rule 10 though gives power to the Court to request for production of any document at any stage of proceedings, it is however subject to Order 21 rule 12 which says “*production of records*”. According to Counsel for Defendant/Respondent, this is interpreted as mandate has been given to the Court in respect of business records and therefore it is not applicable to Plaintiff’s Application.

In determining the instant Application, I will reproduce the provisions in the various rules under **Order 21 of C.I 47** referred to in this Application:

Order 21 rule 10 provides:

Order for production to Court:

“At any stage of proceedings in any cause or matter, the Court may subject to rule 12(1) order any party to produce to the Court any document in the party’s possession custody or power relating to any issue in the cause or matter and the Court may deal with the document when produced in such a manner as it thinks fit”.

Rule 11 provides:

Production to be ordered only if necessary.

“(1) An order for the production of any document for inspection or to the Court shall not be made under any of these rules unless the Court is of the opinion that the Order is necessary either to dispose fairly of the cause or matter or to save costs.

(2) Where on an Application under this Order for production of a document for inspection or to the Court, privilege from the production is claimed or objection is made for the production on any other ground, the Court may inspect the document to decide whether the claim or objection is justified.

The argument raised by Counsel for Defendant/Respondent in objecting this Application is premised on Order 21 rule 2 which states:

Discovery by parties without order.

2(1) Subject to this rule, a party in an action shall within 14 days after the Pleadings in the action are closed between that party and any other party make and file for service on the other party a list of the documents which are or have been in that party's possession, custody or power relating to any matter in question between them in the action”.

It is my opinion that, this particular rule referred to by Counsel for Defendant/Respondent in raising this objection is not applicable to the instant Application.

This is in respect of Discovery by parties without order.

Rule 10 is specifically with reference to a Court order.

Counsel for Defendant/Respondent argument that **Rule 10 is subject to Rule 12(1)** which is ¹applicable to business records and the documents requested for are not business records, in my opinion is not the issue here.

It is my contention that the drafters of this act, provided **Order 21 rule 11** to cure any such narrow interpretation or misinterpretation.

It is my considered opinion that the production of the said documents is necessary. On this score, I will grant the Application and order that the Defendant/Respondent must within fourteen (14) days produce the following document to this Court.

- 1) *The original copy of the Land Certificate referred to in their Witness Statement as Exhibit 1.*
- 2) *Documents evidencing the grant of the Land Certificate whether a Lease, Statutory Declaration, Assignment and any other.*
- 3) *Consent Judgment referred to in the Witness Statement which is:*

Nene Angmetey Kplivie

Vrs

Nene Nanor Kokotey IV

Suit No. E/59/201.

There is no order as to cost.

H/L: RITA AGYEMAN-BUDU(MRS)

(JUSTICE OF THE HIGH COURT).

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