

GHANA / JUDGMENT

NDK FINANCIAL SERVICES LTD. (CM/INTD/0082/2018) [2023] GHAHC 413 (7 November 2023) [2023] GHAHC 413

COURT

High Court

CASE / FILE NUMBER

CM/INTD/0082/2018

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IN THE SUPERIOR COURT OF JUDICATURE IN THE COMMERCIAL DIVISION
(COURT 1) OF THE HIGH COURT OF JUSTICE ACCRA
HELD ON TUESDAY THE 7TH DAY OF NOVEMBER, 2023
BEFORE HER LADYSHIP JUSTICE SHEILA MINTA
SUIT NO. CM/INTD/0082/2018
NDK FINANCIAL SERVICES LTD.

-

PLAINTIFF

VRS.

1. KWASHIE TAILORS & DRY CLEANERS

-

DEFENDANTS

2. MICHAEL KWASHIE

3. YVONNE KWASHIE

ATTORNEY GENERAL

I TRANSPORT LIMITED

-

-

THIRD PARTY

CLAIMANT

PARTIES:

ABSENT

COUNSEL: ANDREW APPAU OBENG, ESQ., FOR PLAINTIFF/
JUDGMENT CREDITOR – PRESENT
COUNSEL FOR THE CLAIMANT – ABSENT
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KWASHIE TAILORS & DRY CLEANERS & ORS.

JUDGMENT

This matter was adjourned to today for the Court to make the determination in respect of the issues between the Claimant and the Execution/Creditor. Counsel for the Claimant, Baffour Gyau Bonsu Ashia, was in Court on 9th October, 2023 and informed the Court that he has been recently engaged as new Counsel in respect of this matter and prayed the Court that the matter be adjourned to enable him file his processes. And at his request, the matter was adjourned to today. The Court notes that Counsel for the Claimant filed Notice of Change of Solicitor on 20th October, 2023, but today Counsel for the claimant has failed to appear to the Court and has written a letter dated 7th November, 2023, that is today, to say that he is indisposed and prays the Court to have the matter adjourned to 20th December, 2023 (over one full month). Meanwhile, the purported excuse duty form attached to his letter is not dated and it is for two weeks. From the conduct of the Claimant in this interpleader proceedings, it is obvious that he is not interested in prosecuting its claim and the Court will proceed to deliver its judgment summarily with the affidavit before it. In the suit commenced by the Plaintiff/Execution Creditor, herein after referred to Execution/Creditor on 11th August, 2011 against Kwashie Tailors and Ors., the Defendants herein, judgment was entered in favour of the Execution/Creditors. The Execution Creditor subsequently put in place the execution process to recover the judgment debt of the litigation in which judgment was entered on 13th April, 2018. During the execution process, the Deputy Sheriff attached a property situate at Bawaleshie, East Legon, measuring approximately 0.31 acres. I Transport Limited, the Claimant herein filed a Notice of Claim on 27th September, 2018 contending that the said property had been sold to it by the Execution/Debtors by a Lease Agreement dated 13th November, 2017. The Execution/Creditor also filed a Notice of Dispute on 9th October, 2018 disputing the Claimant's claim, and this Court upon an Ex-parte Application of the Page 2 | 4 SUIT NO. CM/INTD/0082/2018 - NDK FINANCIAL SERVICES LTD. VS. KWASHIE TAILORS & DRY CLEANERS & ORS. Registrar made an Order on 25th April, 2022 for the parties to appear in Court to prove their respective claims. Per the orders of the Court, the Claimant filed its Affidavit of Interest on 16th June, 2022 and the Execution/Creditor filed its Response on 28th August,

2022. This matter has protracted because the parties intimated to the Court that they wanted to settle the matter out of Court and this obviously they failed to do. Upon further Orders of the Court, the Claimant and the Execution/Creditor filed their Witness Statements together with documents in respect of their respective claims. It is the determination of the issues between the Claimant and the Execution/Creditor that is for determination by the Court. Witness Statements have been filed but it is the clear thinking of the Court that this matter can be determined summarily. In support of its claim, the Claimant contends that the

property the subject matter of this suit has been sold to it by the Execution/Debtors sometime in November, 2018 and attached as “Annex A”, being a purported Lease Agreement made by Mr. Mike Kwashie and Mrs. Yvonne Kwashie in favour of the Claimant. Claimant further averred that he purchased the said property in good faith without any notice of any encumbrance and has constructed a building on same for its business operations. According to the Execution/Creditor, the Execution/Debtors could not have validly transferred their property to the Claimant which said act is merely calculated to overreach the Execution/Creditor and prevent it from enjoying the fruits of its judgment. The Execution/Creditor further averred that the Claimant cannot be said to be a bona fide purchaser without notice of any encumbrance. The Court notes from the evidence before it that, the Claimant’s purported Lease Agreement, “Annex A” is neither registered nor stamped. The Execution/Debtors have been in Court over the debt owed the Execution/Creditors for many years, and to have decided to sell their property at the time they did and assuming same is true to the Claimant, can only be construed as an attempt to overreach the Execution/Creditor. It is rather unfortunate that the P a g e 3 | 4 SUIT NO. CM/INTD/0082/2018 - NDK FINANCIAL SERVICES LTD. VS. KWASHIE TAILORS & DRY CLEANERS & ORS. Execution/Debtors may not have disclosed the fact that judgment has been entered against them to the Claimant, but this Court cannot condone such an act which is intended to circumvent the attachment of the said property. It is therefore my humble view that the Claimant’s claim be dismissed, and I order that the Bailiffs proceed with the execution process. I further order that the Lease Agreement dated 13th November, 2018 and executed between Mr. Mike Kwashie and Mrs. Yvonne Kwashie AND the Claimant (I Transport Limited) be and is hereby set aside, and I award Cost of GH¢10,000.00 in favour of the Plaintiff/Judgment Creditor against the Claimant. (SGD.) SHEILA MINTA, J. JUSTICE OF THE HIGH COURT P a g e 4 | 4 SUIT NO. CM/INTD/0082/2018 - NDK FINANCIAL SERVICES LTD. VS. KWASHIE TAILORS & DRY CLEANERS & ORS.

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