

GHANA / JUDGMENT

AGRICULTURAL DEVELOPMENT BANK VRS. RAKTIA HOLDINGS LTD AND ANOTHER (INTS/09/2023) [2025] GHAHC 49 (28 March 2025)

[2025] GHAHC 49

COURT

High Court

CASE / FILE NUMBER

INTS/09/2023

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IN THE HIGH COURT OF JUSTICE, COMMERCIAL DIVISION HELD AT KUMASI ON FRIDAY THE 28TH DAY OF MARCH 2025 BEFORE HIS LORDSHIP JUSTICE CHARLES KWESI BENTUM - HIGH COURT JUDGE

SUIT NO. INTS/09/2023 AGRICULTURAL DEVELOPMENT BANK

- PLAINTIFF Accra Financial Centre 3rd Ambassadorial Development Area Ridge Accra VRS
1. RAKTIA HOLDINGS LTD
- DEFENDANTS Santasi Kumasi Ashanti 2. ROBERT AKWASI KWAKYE NKETIA Plot No. 35
Block V Ahinsan Kumasi Ashanti ALLEXIE KWASI FOSU
- CLAIMANT H/No. Ba 54 Bantama - Kumasi

TIME: 09:03AM.

JUDGMENT:

This action is an Interpleader Suit. It is Sheriff's Interpleader. This means that, the Sheriff of this Court or the Registrar of the Court, is the person who initiates, the proceedings for the determination of the ownership of the subject matter which is under attachment or execution. In this instant case, it is the Sheriff or the Registrar who initiated the instant Interpleader proceedings. See the case of Republic v High Court, Accra; Ex-Parte: Anyan (Platinum Holdings – Interested Party) [2009] SCGLR, 255 @ 261 – 262. On 7th November, 2024, one Alexie Kwasi Fosu, the Claimant herein, applied for the issuance of Interpleader Summons against the Execution/ Creditor, Agricultural Development Bank. According to the Claimant, he has an interest in the

building property, Plot No. 7, Block R, Kwamo – Ejisu. That this property has been attached under the process of the High Court (Commercial Division), Kumasi. The Execution/Creditor, disputed the Claimant's claim over the attached building property, Plot No. 7, Block R, Kwamo, Ejisu. The said claim to the property attached, having been disputed, the Registrar may apply to the Court for relief under Order 44 r 12 of C. I. 47. By an Application for relief by the Registrar, the Court shall order the Claimant and the Execution/Creditor, to appear before it, for the issue between them to be determined. Accordingly, this Court made an Order calling on the Claimant and the Execution/Creditor to appear before it for the determination of the issue between them. This Court on 17th October, 2024, ordered the parties to file their respective Witness Statement and Pre-Checklist and adjourned for Case Management Conference. The parties filed their respective Witness Statement and Pre-Checklist and pursuant to Case Management Conference, set the matter for definite hearing. The Claimant opened his case, through his Lawful Attorney, on 11th February, 2025, cross-examined and same concluded on the self-Same day. The Execution/Creditor opened its case on the said 11th February, 2025, cross-examined per its representative and same concluded on the self-Same day. Both parties filed Written Address. The Burden of Proof/Evidence adduced and Evaluation. The burden of proof is cast on the Claimant to provide evidence to this Court that, no one else apart from him, is the owner of this said Plot No. 7, Block R, Kwamo, Ejisu under attachment. It is when the Claimant discharges the burden of proof on him, that, the Execution/Creditor shall be called to dislodge the evidence adduced by the Claimant. Where the Claimant fails to discharge the burden, the Court shall not call the Execution/Creditor to rebut the evidence of the Claimant. So, the Claimant bears the burden of persuasion to establish a requisite degree of believe concerning the fact of his alleged ownership of Plot No. 7, Block R, Kwamo as he has stated, in his Interpleader Summons, in the mind of this Court and in accordance with Section 10(1) of NRCD 323. He bears also the burden of introducing sufficient evidence to avoid a ruling against him on his alleged ownership of Plot No. 7 Block R, Kwamo, Ejisu, per the dictates of Section 11(1) of NRCD 323. Both parties proffered, as it is to be expected, rival evidence before the Court per their Witness Statement and oral testimony. Did the Claimant discharge, the evidential and persuasive burden, by proving that, he is the owner of Plot No. 7 Block R, Kwamo, Ejisu attached by this Court and stated by him in his Interpleader Summons? The Claimant, testified through his Lawful Attorney, Philomena Owusu-Ansah. Through her, the Claimant sought to proof his ownership of Plot No. 7 Block R, Kwamo, Ejisu. However, this is what she said at paragraphs 4 and 12 of her Witness Statement filed on 20th January, 2025, as follows: "4) Recently, the bona fide property of the Claimant, Plot Number 03A Block R Adako Jachie was attached in execution of a Judgment in an action commenced at the High Court, Kumasi Commercial Division titled:- AGRICULTURAL DEVELOPMENT BANK V RAKTIA HOLDINGS & ROBERT AKWASI KWAKYE NKETIA (SUIT NO. BFS/54/2016)

- 12) The Claimant's plot is numbered Plot Number 03A Block R Adako-Jachie and the property that had to be attached is Plot Number 7 Block R Kwamo-Ejisu which is clearly separate and distinct from my plot." In his interpleader Summons, the Claimant, did not state that, his plot that has been attached is Plot No. 03A, Block R Adako Jachie. His Lawful Attorney, however, is heard to say at paragraph 12 of the Witness Statement that, Plot No. 03A, Block R

Adako Jackie is his Plot. The Claimant, through his Lawful Attorney, has changed his case. With one side of his mouth, per his application for interpleader summons, the Claimant boldly declares that, he is the owner of Plot No 7, Block R, Kwamo-Ejisu and with the other side of his mouth, per paragraphs 4 and 12 of the Witness Statement of his Lawful Attorney, he says that, he is the bona fide owner of Plot No. 03A, Block R Adako Jackie. Per his application for interpleader summons, the Claimant says that, the property that has been attached is Plot Number 7, Block R Kwamo-Ejisu. He has changed his case and now says per paragraphs 4 and 12 of the Witness Statement of his Lawful Attorney that, the property that has been attached is Plot No. 03A, Block R Adako Jackie. The same Claimant, per his Lawful Attorney, testified as follows under Cross- Examination on 11th February, 2025, by Counsel for the Execution/Creditor: "Q: It was indicated in the Interpleader Summons Exhibit "B" that, Plot No. 7 Block R, Kwamo which belongs to the Claimant has been attached on account of Judgment Debt. Is it not so? A: Yes, My Lord. Q: In the Deed of Assignment dated 15th July, 2012, between the Claimant and the 1st Defendant/J/Debtor and the Claimant, the property named therein Plot No. 03A Block R, Adako Jackie is different from the property that had been stated in the Interpleader Summons which is Plot No. 7 Block R, Kwamo? A: Yes, My Lord, they are different. Q: I put it to you that, the Claimant has no interest in Plot No. 7 Block R, Kwamo. A: Yes, My Lord." The testimony of the Claimant through his Lawful Attorney supra is telling. He admits that, the property he claims to be the owner and that been attached on account of a judgment debt is Plot No. 7 Block R, Kwamo, per his Exhibit "B". He further says through his Lawful Attorney that, his Deed of Assignment dated 15th July, 2012, Exhibit "C", he executed with 1st Defendant/J/Debtor is Plot No. 03A, Block R Adako Jackie. He says again through his Lawful Attorney that, this property Plot No 03A, Block R Adako Jackie, is different from Plot No. 7 Block R, Kwamo, that he has stated in his Interpleader Summons. The Claimant now tells the Court through his Lawful Attorney that, he has no interest in Plot No. 7 Block R, Kwamo. At this point, that should have been the end of this Judgment delivery. This is because, the Claimant came to this Court, saying that, his property has been attached in execution of the Judgment of this Court and names his property as Plot No 7, Block R Kwamo. Indeed, according to the Claimant per his interpleader summons, no other property, has been attached in execution of the Judgment of this Court apart from Plot No. 7 Block R, Kwamo. The Claimant says to this Court that, he has no interest in Plot No. 7 Block R, Kwamo. The Court, however, will not end the Judgment here, on account of the Claimant's admission that, he has no interest in Plot No. 7 Block R, Kwamo he claims per his interpleader summons. This is because, Learned Counsel for Claimant, in his Written Address for and on behalf of Claimant, however, refers to Exhibits "C", "8" and "K" and submits to the Court that, from the results of the two searches conducted, it is abundantly clear that, the entire site was sub-divided by Ejisu Planning Committee into Plots Nos. 03A and 03B, Block R, Adako Jackie. He further refers to various transactions affecting Plot No. 03A, Block "R" per the searches. The Court has taken a critical evaluation of Exhibit "C". It indicates an assignment dated 15th July, 2012 between Raktia Holding Ltd, the Assignor, the therein, on one hand and Alexie Kwasi Fosu, the Assignee on the other. The first recital in Exhibit "C" indicates that, Alexie Kwasi Fosu, the Claimant

herein, traces his root of title to Raktia Holding Ltd, the latter who also traces his root of title to the Adako Jachie Stool by a Lease dated 13th April, 2007. Per the said Exhibit “C”, the Claimant herein, as Assignee therein, was granted the unexpired term of the Lease of Raktia Holding Ltd specifically, for Plot No. 03A, Block R Adako Jachie. A juxtaposition between Exhibits “8” and “K”, also, shows that, Plot No. 7 Block R, Adako Jachie and Plot No. 07 Block R, Kwamo, both falls on Stool Land Part II respectively. Paragraph 2 of Exhibit “8” is premised on the language that, Plot No. 07 Block R, Adako Jachie is the subject matter of a lease dated 13th April, 2007 from Adako Jachie Stool and Asantehene to Raktia Holding Ltd. The language in paragraph 2 of Exhibit “K” is different from that of Exhibit “8”. In Exhibit “K”, paragraph 2 states that, Plot No. 07 Block R, Kwamo forms part of a large tract of land which is the subject matter of a lease dated 13th April, 2007 from Adako Jachie Stool and Asantehene to Raktia Holding Ltd. In the humble view of the Court, what Exhibit “K” tells the Court is that, Plot No. 07 Block R, Kwamo is comprised in a large tract of land which large tract of land, is also the subject matter of the said lease dated 13th April, 2007. The Court observes that, the said large tract of land, is comprised of both the localities of Kwamo and Adako Jachie. That the said large tract of land, per the two searches, Exhibits “8” and “K”, of which the localities of Kwamo and Adako Jachie are comprised, falls on what it is described as Stool Land Part II. The Court therefore rejects, the clear attempt of the Claimant to assert through Exhibits “8” and “K” the two searches that, Plot No. 07 Block R, Adako Jachie is the same Plot of Land, as Plot No. 03A, Block R Adako Jachie. The Claimant, having come to this Honourable Court to say that, his property has been attached in execution and specifically, named the property to be Plot No. 07 Block R, Kwamo, he will not be permitted to produce evidence of a completely different property, Plot No. 03A Block R, Adako Jachie. The Court, has already observed, that the Claimant speaks from both sides of his mouth. Whilst he says that, the property that has been attached is situate at Kwamo, he says in his evidence now that, the property that has been attached is situate at Adako Jachie. In stating the case of the Claimant, this is what Counsel wrote at page 2 of the Written Address inter alia: “The Claimant further states that, the property Plot Number 03A, Block R, Adako Jachie is separate and distinct from the property which the Plaintiff/J/Creditor per their application for the fixing of reserve price sought to attach, that is Plot Number 7 Block R Kwamo-Ejisu.” If per Counsel’s Written Address, he says that, the said two properties are separate and distinct then, same supports the conclusion of the Court that, the said Plots situate at Adako Jachie and Kwamo are not the same Land, although, Adako Jachie and Kwamo localities forms part of a large tract of land in the Ejisu Municipality known as Stool Land Part II. The law is trite that, a Witness, whose evidence on oath is contradictory of a previous statement made by him, whether sworn or unsworn, is not worthy of credit and his evidence cannot be regarded as being of any importance in the light of his previous contradictory statement, unless he is able to give reasonable explanation. See the case of *Gyabaah v The Republic* [1984 – 86] 2 GLR 461. See also *State v Otchere* [1963] 2 FLR 461. In the circumstance of this case, the previous statement of the Claimant contained in his Application for Interpleader Summons is in conflict with his evidence on oath as to the property he claims belongs to him and has been attached. Further, the Claimant never

offered any reasonable explanation for claiming that, his property per the interpleader summons is the one described therein as situate at Kwamo and in his evidence changes his previous claim for a property, situate at Adako Jachie. The Claimant, clearly has failed to discharge the obligation imposed on him statutorily per Sections 10(1) and 11(1) of NRCD 323. Learned Counsel for Claimant takes issue on behalf of the Claimant, on Exhibit “1” of the Execution/Creditor, a Mortgage Agreement. He makes the case that, that, document is not registered in relation to the transactions between the Plaintiff/J/Creditor, ADB and Defendants. The Court is at sea, how this submission advances the Claimant’s case that, he is the owner of the property which according his Interpleader Summons, is that situate at Kwamo. The registration or non-registration of Exhibit “C” is not relevant to the advancement of the Claimant’s case as this suit is not between the Defendants therein and ADB therein. This Court did not find any evidential value in respect of Exhibit “1” and has not relied on same in the determination of this suit. The Claimant per Counsel in the Written Address states that, Exhibit “D(1)”, the Valuation Report under “Executive Summary” provides for the property, the subject of valuation to be located at Adako Jachie. Counsel however, fails to admit that, on the front page of the said Exhibit, the property is stated to be located at Plot No. 07 Block R, Kwamo, Ejisu. That, the letter of transmission dated 5th December, 2022, at page 1, addressed to the Registrar of this Court, also states that, the Valuation Report is on property, Plot No. 07, Block R, Kwamo, Ejisu-Juaben. Further, the Claimant per Counsel states that, the Valuation Report has the ownership of the property as “unknown”. The Court does not see how this inures to the benefit of the Claimant who on the contrary, says that, he is the owner of the property attached and which property is the one, the subject of the valuation. The Court concludes this delivery that, the Claimant has failed to proof that, he is the owner of the property, the Sheriff or Registrar of this Court has presently attached in execution of the Judgment of this Court, which property, is no other than, Plot No. 7, Block R, Kwamo, Ejisu. This Court finds as a fact that, the Sheriff or Registrar has not attached a property known as Plot No. 03A, Block R Adako Jachie. The Claimant’s claim per the Interpleader Summons that, he is the owner of Plot No. 7, Block R, Kwamo, Ejisu is dismissed for being without merit. Costs follows the event. Costs of GH¢50,000.00 is awarded in favour of the Execution/Creditor, Agricultural Development Bank against the Claimant, Alexie Kwasi Fosu. Per Order 74 r 3(1) of C. I. 47, the costs shall be paid immediately and shall be paid by the Claimant herein, into Court for the benefit of the Execution/Creditor, Agricultural Development Bank. (SGD.) H/L JUSTICE CHARLES KWESI BENTUM (JUSTICE OF THE HIGH COURT) LEGAL REPRESENTATION: Patricia Antonio for the Execution/Creditor. Yaw Boafo for the Claimant. 12

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