

GHANA / JUDGMENT

DAKURAH VRS BIRIYERI (UW/JP/DC/A1/09/2022) [2024] GHADC 429 (7 June 2024)

COURT
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7 June 2024

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IN THE DISTRICT COURT –NADOWLI IN THE UPPER WEST REGION.
HELD ON THE 7TH JUNE, 2024
BEFORE HIS WORSHIP, JEHOSEPHAT ACHINA NYARKO (ESQ.)
BETWEEN
PETER BAYOR
NAWULI-NADOWLI.
AND
ZIENDAA LAZARUS

DIGITAL ADDRESS: X0-0003-8893
NADOWLI
SUIT NO: UW/ND/DC/A1/01/2023
PLAINTIFF
DEFENDANT

RULING

This matter having commenced by an interpleader action filed on the 8th of June, 2023 has its root in another matter with suit no. UW/ND/DC/A1/01/2023, filed on the 17th of August, 2022 which was determined by this court per a settlement terms adopted by the court as the consent judgment of the court on the 14th of March, 2023. In that consent judgment, the court decreed per the settlement terms that the land in dispute was to be shared equally between the parties. The Defendant therein, then filed an application on notice for leave to issue writ of possession and for same to be served on the Plaintiff for recovery of possession of his 50% share of the land. It is the sharing of the land between the parties therein that has provoked this interpleader action, where the claimant, now the plaintiff herein is praying this court for the following reliefs to be granted him as follows;

- a. Declaration of title of the land
- b. Possession of the three (3) acres of plots of land at Nadowli 1
- c. Perpetual injunction restricting the defendant etc from having anything to do with the disputed land until the final determination of the suit. PLAINTIFF'S CASE: The Plaintiff's case is that he acquired the disputed land from his great grandfather Maasoraa Kongleeteng, who gave birth to his father Maasoraa Bayor. Plaintiff claimed that his father farmed on the land with his children including him the Plaintiff. Plaintiff claimed that after the death of his father, he plaintiff inherited the disputed land from his father. The Plaintiff avers that there was a dispute between the Defendant herein and Puoriyela Bayor which matter was settled by the Tendaana. The Plaintiff claimed that upon the sharing of the land between the parties, he got to know that his three (3) acre land he inherited from his father had fallen into the portion of the Defendant after the disputed land was shared by the parties per their settlement terms. DEFENDANT'S CASE: The Defendant also claimed that the affected land belongs to his late father and that when his father died, his father's brother by name Tiewala Naa advised him to take possession of his father's land and farm on it. He claimed he farmed on the said land without any opposition. Defendant further claimed that on one occasion when he visited his farm, he was confronted by the Plaintiff with a cutlass and a gun. The Plaintiff, he said confronted him and asked why he was farming on the land, which confrontation resulted in a disputed which was reported to the Nodowli Police and a further court action was instituted.

BACKGROUND

As stated above, the determination of a dispute with suit no. UW/ND/DC/A1/01/2023, filed on the 17th of August, 2022, in this court resulted in the equal sharing of the subject matter therein. The sharing as the Plaintiff claim affected his 3 acre land and as a result issued this interpleader action for the reliefs therein as reproduced above. ISSUE FOR DETERMINATION: The issue for determination in this ruling is as follows; 2

- Whether or not the jurisdiction of the court has been properly invoked by an interpleader action, considering the reliefs sought by the Plaintiff.

ANALYSIS

In the decided case of *The Republic vrs. The High Court, Accra, Ex -Parte Anthony Kwabwena Anyan, Platinum Holding*, Interested Party, being an application to invoke the supervisory jurisdiction of the Supreme Court under Article 132 of the Constitution, 1992. In the above matter, the applicant sought an order of certiorari directed at the High Court presided over by J.B. Benson J. for the purpose of quashing that part of the ruling of the court dated the 10th of June, 2008, that "the Claimant has no interest in the subject matter of the application" The facts in that case bears resemblance with that of this matter. In that case, the applicant and the interested party were sub-lessees of one Edward Nassaar and Co. Ltd, a lessee of the Government

of Ghana of a piece of Land in the light industrial area, South of Ring Road West. Edward Nassar and Co. Ltd, having taken a lease of the property, sublet portions of it to the Applicant and Interested Party respectfully. The Interested Party on or about 24th of March, 2004 took an action against the Applicant for declaration of title to plot no. '1A' and marked "44" on a map attached the Applicant's statement of case therein and obtained judgment against him. The interested party then issued a writ of possession which was also granted on the 26th of November, 2007. In executing the judgment, it was alleged that the Interested Party entered another property of the Applicant other than that in respect of which judgment was obtained and attached same. It was against that execution that the interpleader proceedings was instituted in which the applicant claimed interest in the attached property. The trial judge then ruled as follows, "that in terms of the area and dimensions in the view of this court and from the exhibits annexed to the various affidavits clearly showed that the land is different in dimension and size. The location is also different. We therefore hold as such that the execution was not in respect of the property for which judgment was obtained" ³ The trial judge also went ahead and pronounced that the applicant had interest in the subject matter. The action for the quashing of that order in that case was premised on "want of and or excess of Jurisdiction" In deciding the certiorari application, Her Ladyship, R.C. Owusu JSC delivered the decision of the Court as follows; " ... on the relief sought for by the Applicant in the Interpleader proceedings, looking at the Applicant's case before the High Court, did his relief lie in an interpleader action? His complaint was that, the land the subject matter of the interpleader action was wrongfully attached, thus making the execution wrongful. An execution is wrongful when it is not authorized or justified by the writ of execution or by the judgment under which it is issued. In this case, the High Court having ruled that the property attached was not justified by the writ of execution, the execution was wrongful. Unlike property seized in the execution of judgment debt by writ of fieri facias, the property seized under a writ of possession covers a particular property, subject matter of the judgment in respect of which the judgment was obtained. It is when property had been attached normally under a writ of fieri facias that the person other than the defendant who claims an interest in it interpleads" Similarly, in another interpleader action before the High Court in the matter of Export and Import Bank of the United States of America vrs. Tatop Co. Ltd & ORS , Nii Bofo Danyina-Nse I, Claimant, 2021 , the claimant sought relief for declaration of title to a piece of land that has been attached under execution. The trial judge after stating the decision in Salama v. sharani [1973] 2 GLR 364, where Abban J. (as he then was) stated that "interpleader proceedings should not be confused with an ordinary action... The proceedings cannot therefore be described as "an action" in its ordinary sense" The Learned Judge in the Export and Import Bank of the United States of America case (supra) opined that the claimant's prayer before the court for declaration of title to the land in question among other reliefs not only is misconceived but abuse of court process. She added that the claimant was not entitled to seek substantive reliefs as was unfortunately done in the proceedings before her. ⁴ In the case of the Republic vrs. High Court, Winneba, Ex-Parte University Teachers Association of Ghana, (Winneba Chapter); Interested Parties Supi Kofi Kwayera & Ors, Civil Motion, No. JS/65/2017, 20th December, 2017, His Lordship, Pwamang JSC, delivering the ruling of the court had the following to say; "the declaratory reliefs and consequential orders sought by the 1st interested party in the High Court are regular civil

proceedings and therefore ought to have been initiated by a writ of summons pursuant to the provisions of Order 2 r 2 and not Order 19 r 2. The trial judge was clearly in error when in the face of the reliefs sought he held that the proceedings were properly constituted with the use of the originating motion. In our opinion, the jurisdiction of the High Court was not properly invoked in this case” DECISION Considering the reliefs sought by the Plaintiff in this interpleader action, being claim for declaration of title, recovery of possession among others, this court is of the view that the Plaintiff’s action should have commenced by a writ and not by an interpleader action. Following from the above, this court is of the opinion that the interpleader action invoking the jurisdiction of the court is incompetent and on that basis, same is a nullity as it can not invoke the court’s jurisdiction considering the claim of the plaintiff. It is hereby set aside. However on the authority of the Ex-Parte Winneba case (supra), this court upon rendering the interpleader action incompetent, will grant the plaintiff liberty in the interest of justice to issue a writ if he is so minded to have his grievance redressed. (SGD) JEHOSEPHAT ACHINA NYARKO (ESQ) (MAGISTRATE, DISTRICT COURT-NADOWLI) COUNSEL: BAGONLURI LWANGA SAANYEL FOR THE PLAINTIFF. CLEMENT ELEDI (HON.) FOR THE DEFENDANT. 5 6

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