

GHANA / JUDGMENT

NTUMY VRS SQUATTERS (A11/09/2022) [2023] GHACC 687 (11 December 2023)

[2023] GHACC 687

COURT

Circuit Court

CASE / FILE NUMBER

A11/09/2022

Source: ghalii.org · Research copy typeset by Esheria. Not court-issued or certified.

IN THE CIRCUIT COURT HELD AT KWABENYA ON MONDAY THE 11TH DAY OF DECEMBER, 2023
BEFORE HER HONOUR MAWUSI BEDJRAH, CIRCUIT JUDGE CASE NO. A11/09/2022 STEPHANIE
E. A. NTUMY PLAINTIFF VERSUS SQUATTERS DEFENDANTS

JUDGMENT

Plaintiff is an author and resident at H/N H113A, Ashongman Estates, Accra. Defendants are squatters in H/N 113B, Ashongman Estates, Accra. Per a writ of summons and statement of claim filed on 14th October, 2021, Plaintiff claims against Defendants the following;

- i. Declaration that the Plaintiff is bona fide owner of H/No. H113B at Ashongman Estates, Accra
 - ii. An order of recovery of possession of the said house
 - iii. An order of perpetual injunction restraining the Defendants, their agents, assigns, privies, workmen, successors and all persons claiming through them from interfering with the Defendants' enjoyment of the land.
 - iv. Costs
 - v. Any further order(s) as the Honourable Court may deem fit
- Plaintiff states that she purchased H/N 113A and H/N 113B at Ashongman Estates through a mortgage facility from the HFC bank sometime in 1994, at the time when she was in Botswana. Plaintiff states that she executed a Power of Attorney appointing one Michael Kosi Gabah as her attorney to manage the property on her behalf. Plaintiff states that she successfully repaid the loan on the 26th day of June, 2006. Plaintiff further states that sometime in 2016, it came to her attention that the son of her husband had moved into H/N 113B. Plaintiff thus confronted her husband who agreed to pay the rent for his son and that her husband paid for a period of two months and stopped. Plaintiff avers that she returned to Ghana in 2018 and demanded that her step son vacates the property, who refused to leave and she was forced to commence an action at the Madina District Court to evict him. Plaintiff says that in the course of the case her step son vacated the property but the Defendants herein moved into the said property. Plaintiff further says that she confronted the Defendants herein but they refused to disclose who permitted them to move into the property. Plaintiff avers that she has done all within her powers to amicably settle the matter but the Defendants have

refused to comply. Plaintiff avers that the conduct of the Defendants is wrongful and unlawful and they have evinced strong intentions to continue with their ‘trespassory act’ unless they are restrained by the order of a Court of competent jurisdiction. The writ of summons and statement of claim were served on the Defendants, i.e. the squatters, who failed to enter appearance. Plaintiff subsequently appointed a Solicitor, Akwasi Opoku-Agyeman, who filed a motion *ex parte* for interlocutory judgment in default of appearance. The Court, differently constituted, granted the application on 19th July, 2022 and awarded cost of ₵2000.00 against the Defendants. Plaintiff subsequently, per her witness statement filed on 16th August, 2022, led evidence in the matter. She tendered the following documents;

- i. Contribution by Plaintiff and late husband towards the purchase of a residential unit under the Home Finance Company Limited Home Mortgage Finance Scheme-Exhibit ‘A’ series ii. Evidence of registration of property in the joint names of Plaintiff and deceased husband-Exhibit ‘B’ series iii. Composition of the property being two residential units registered as A and B, thus H/No H113A and H/No H11 3B-Exhibit ‘C’ Plaintiff testified that she lives at H/No. H 113A, Ashongman Estates and that she was married to Emmanuel Kodzo Bediaku Ntummy of blessed memory. Plaintiff further testified that during their working years, they both contributed towards the purchase of the residential unit, which property was registered in their joint names. According to Plaintiff, she was resident in H/No. H113A and her husband, Emmanuel Kodzo Bediaku Ntummy was resident in H/No. H113B with his family relation named Jude Ntummy. Later, her husband went to live in Kpando and left his family relation by name Jude there alone. The relevant portion of plaintiff’s further evidence that needs to be examined by the Court is as follows; “The persons living in my property say that a certain man named Tony put them there, but have refused to disclose the full name of this Tony or give me their full names either, the reason why I instituted the instant action with “Squatters” as the Defendant.” The real issue to be determined by this Court is whether it is proper to simply describe a Defendant as a squatter or squatters. By Order 2 Rule 3 of CI 47, every writ shall be as in Form 1 in the Schedule provided in CI 47 and that the occupational and residential address of the parties shall be stated on the writ. Form 1 of the Schedule states that the names of the parties shall be stated on the writ. This implies that by the rules of this Court, every writ shall have the names of the Plaintiffs and the Defendants as well as their addresses stated on it. So where a writ does not have the names and the addresses of the Defendants, then that writ is improper and cannot be entertained by the Courts. (See the case of MISS JOSEPHINE AUGUSTA PRA V THE DEVELOPER [2011] DLHC 4369). Also, in the case of EDUSEI V DINERS CLUB SUISSE S. A. [1982-83] GLR 809 at 814, the Supreme Court held as follows: “It is obvious that a Court must be satisfied that the parties appearing as suitors before it did exist as legal personae whether human in form or artificially created.” From the authorities referred to above, all persons appearing before Courts must be identifiable legal persons. In the current case, Plaintiff did not state the name of the Defendants on the writ. She only describes the Defendants as Squatters and goes on to give their address as H/NH 113B, Ashongman Estates, which is the property in respect of which

the suit has been instituted. Meanwhile, she states in her evidence that she and her husband acquired the property and that her husband lived in the disputed property and left for Kpando, leaving his family relation there alone. So the question is how was Plaintiff directing service on the Defendants, who she says, are unknown to her? I have noted from the documents filed to prove service that the earlier processes were either served on the squatters or one of them and one Madam Edith. However, Plaintiff failed to take any steps to amend the name(s) of the Defendants to reflect the appropriate parties. Subsequent processes were not served because Plaintiff failed to direct service. Thus, assuming final judgment is entered in Plaintiff's favour, whom is she going to execute the judgment against? (See MISS JOSEPHINE AUGUSTA PRA vs. THE DEVELOPER, supra). It is, therefore, my view and as concluded in the Miss Josephine case cited above, that the current writ, which describes Defendants as Squatters, is vague. This is because it does not comply with the form of writ as described by Order 2 Rule 3 of CI 47. The writ is, therefore, a nullity. Thus, whatever decision that emanates from it is also a nullity and must be set aside. This implies that the judgment in default of appearance granted the Plaintiff on 19th July 2022 was a nullity and it is hereby set aside. Since it has been established that the writ in the current case is a nullity, it follows that the reliefs endorsed on it cannot be granted to the Plaintiff. I prefer to further borrow the words of the Judge in the case cited supra as follows; "If the Defendant is unknown to her then she has to go into occupation without a Court order. If she does that and the said Defendant thinks the property is for him, he will either confront her or take action against her and that will give her the opportunity to claim the reliefs she is seeking from him. On the other hand if the Defendant does not appear then she takes her property without a Court order. So she does not need a Court order to go into possession of the property." In view of the foregoing, Plaintiff's writ and statement of claim are hereby struck out as being null and void and of no legal effect. No judgment is, therefore, entered for Plaintiff. Her Honour Mawusi Bedjrah Circuit Judge 4

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://ghalii.org/judgments/all/2023/?alphabet=n>

CASE PAGE <https://chat.esheria.ai/case-law/ghana/stephanie-e-a-ntumy-properdescriptionofparties-circuit-court-2023>

Prepared on 29 October 2026 · Esheria