

IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT OF JUSTICE  
SITTING AT TAMALE ON WEDNESDAY THE 12<sup>TH</sup> DAY OF JULY 2023 BEFORE  
HIS LORDSHIP JUSTICE KENNETH EDEM KUJDORDJIE

SUIT NOT. E1/1/2017

ABUBAKARI IDDI

VRS

ZAKARIAH ALHASSAN & 3 ORS

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**R U L I N G**

This is an application to set aside the order of the Court dated the 16<sup>th</sup> day of June, 2023 setting aside the order of this Court dated the 10<sup>th</sup> day of May 2023 which granted leave to Plaintiff/Judgment Creditor/Applicant to issue writ of Possession under the inherent jurisdiction of the court being null and void. On 10<sup>th</sup> day of May 2023, this court granted a motion ex-parte for leave to issue a writ of possession in execution of this court differently constituted. Even though the application was moved ex-parte and the order was not executed, the defendants got wind of the order and caused their solicitor to file a motion to set aside the order of this court dated 10<sup>th</sup> May 2023 which granted leave to the Plaintiff/Judgment/Creditor to issue writ of possession. The gravamen of the Defendant/Judgment/Debtor is that application that there is a pending motion for stay of execution filed on 6<sup>th</sup> May 2021 and supported claim with a search conducted at the registry of the High Court, Tamale.

The Plaintiff/Judgment/Creditor in opposing the motion asserted that the said motion for stay of execution filed by the Defendant/Judgment/Debtor on 6<sup>th</sup> May 2021 has been struck out for want of prosecution on 4<sup>th</sup> May 2022. He never provided evidence in support of his assertion. The court in its wisdom set aside its

own order on the 16<sup>th</sup> day of June 2023 and adjourned the suit to Monday 19<sup>th</sup> June 2023 for the motion for stay of execution to be heard. On 19<sup>th</sup> June 2023, the present application was filed thereby preventing the now famous stay of execution of 6<sup>th</sup> May 2021 from being heard by this Honourable Court. As expected the defendant/Judgment/Debtor filed an affidavit in opposition on 23<sup>rd</sup> June 2023 and subsequently filed another motion on 23<sup>rd</sup> June 2023 titled motion on notice for production of document into Court for inspection and copies thereof of the court's Notes/Record book pursuant to inherent jurisdiction of the court.

I must state that the last in the trilogy of motions in this suit is most unfortunate as it contravenes the provision of Act. 459 Section 70 (1) of Courts Act, 1993 which states as follows:-

“No person is entitled to inspect or to have a copy of the record of evidence given in a case before a court or to a copy of the court's notes, except as may be expressly provided by the constitution, a rule of court or any other enactment”.

Having provided the background to the present motion, the court will turn its attention to the consideration of the arguments of the protagonist and antagonist of the motion on notice to set aside the order of this court dated 16<sup>th</sup> June 2023. In moving the motion counsel for the applicant accused the respondent of fraud and misrepresentation. For the purposes of emphasis and clarity the paragraphs are reproduced hereunder:

15. That the Defendants/Judgment/Respondents herein willfully misrepresented to this honourable court that there was a pending

motion for stay of execution contrary to records of the court that the motion was struck out on the 4<sup>th</sup> day of May, 2022.

16. That the Defendant/Judgment/Debtors/Respondents threw dust into the courts eyes by surreptitiously and fraudulently procuring a purported search results to the effect that the Motion on Notice for stay of Execution was still pending. (Attached hereto and marked as Exhibit "C" is a copy of the said search report of the Respondents).
17. That I am advised by Counsel and verily believe same to be true that the order of the court dated 16<sup>th</sup> day of June, 2023 which set order set aside the court's previous order dated 10<sup>th</sup> day of May, 2023 was obtained by fraud and same is null and void and ought to be set aside.

The applicant then relied on the cases of **Amoabimaa vrs Badu [1957] 2 WALR 214, Mahama & Anor vrs Moshie [1986] DLHC 940**. The Respondent in opposing the motion contended that no evidence has been provided by the applicant that the stay of execution was moved. He further asserted that the search produced by the applicant did admit that the proceedings on which the search was based is not available and that Exhibit D which is the basis for their motion did not override the earlier search which stated that the motion was not moved. The salient paragraphs of Defendant/Judgment/Debtor/Respondents' affidavit is reproduced below:-

16. Paragraph 15, 16, 17 of the affidavit in support are denied.
17. That the search report the deceased applicant has attached to the affidavit in support contradicts an earlier search report authored by the same registry of the court and that without the production into court and inspection of the court notes on the court file and the record book,

the veracity of deceased applicant's search report cannot be ascertained.

According to the Respondent, Exhibit D was not signed by the Registrar hence the application has no merit. Respondent concluded his argument by relying on Section 37 of Evidence Act. 1975 NRC D 223 and Order 44 rule 3.

Due to the conflicting search results emanating from the registry of the High Court, Tamale, the registrar was summoned by the Court to give evidence on the conflicting search results which emanated from his registry.

Before I commence my analysis of the application, I will make few comments on the application before the Court. Firstly the motion filed by the applicants was not signed by the Counsel for Plaintiff/Applicant in the person of Alhaji Mohammed Shaibu Abdullai. The motion was signed for Alhaji Mohammed Shaibu Abdullai Esq. without any indication as to who is the signatory, whether he/she is a lawyer with the requisite licence to do so. See **Republic v High Court (Fast Division), Accra Ex-parte Justice Pwavra Terwajah & 2 Ors SC Civil Motion J4/24/2013**. This therefore created a little doubt on the validity of the document as it will require further investigation to determine the author of the said signature. It is a practice which should be discontinued as this court frowns on such practice. However in the interest of justice and the consideration of Order 1 rule 2 of C.I. 47 and more importantly the issues arising from this application which threatens to cast a slur on the integrity of the Judicial process, I will consider this conduct a peripheral hence I will proceed directly into the merits of the application.

The issue raised by the application centre on two searches which emanated from the registry of the High Court, Tamale with conflicting answers to the same

questions posed by the parties to this suit. The two searches are annexed to the application of the applicant as Exhibits C and D. Exhibit C is a search conducted by Counsel for Defendants/Judgment/Creditor/Respondents Sylvester Isang Esq. and Exhibit D is a search conducted on behalf of Alhaji Mohammed Shaibu Abdullai Esq. Counsel for the Plaintiff/Judgment/Creditor/Applicant. The first two questions in the search of the Defendant/Judgment/Debtor/Respondent was answered in the negative. In other words the motion on notice for stay of execution dated 6<sup>th</sup> May 2021 was not moved and neither was the Plaintiff served with a copy. The search conducted by Syvester Isang Esq. dated 10<sup>th</sup> May 2023 was filed on 10<sup>th</sup> May 2023 and the said search was executed on the same day by the Registrar, High Court Tamale who signed and affixed his stamp on it.

The first two questions posed by the search of the Plaintiff/Judgment/Creditor/Applicant was answered in the affirmative. In other words the search stated that the motion for stay of execution was struck out on Wednesday the 4<sup>th</sup> day of May 2022 for want of prosecution. The third question posed by the search was a request instead of a question to the Registrar to attach the record of the proceedings of 4<sup>th</sup> day of May 2022. This request is to invite the Registrar to breach the provision of the Court Act. 1993 (Act 459) to be exact Section 70(1) (supra). Exhibit D was not signed by lawyers for Plaintiff/Judgment/Creditor rather it was signed by anonymous person for Alhaji Mohammed Shaibu Abdullai Esq. This search was filed on 16<sup>th</sup> June 2022 and it was not executed by the Registrar of the High Court neither did it bore the stamp of the Registrar.

One common trait borne by both Exhibits C and D is that they were both court documents filed in the Registry of the High, Tamale. In effect they are official

documents or records which emanated from the Registry and is indicative of an official search from an authentic source. Under Section 37(1) Evidence Act 1995 of NRCD 323, “it is presumed that official duty has been regularly performed”. It is to be noted that the above presumption is not concerned with the truth or lawfulness of the contents of the document or action of public official and Section 37(2) of NRCD 323 puts it succinctly that “This presumption does not apply to an issue as to lawfulness of an arrest if it is found or otherwise established that the arrest was made without warrant”. The presumption which is known by its Latin *MAXIM PRAESUMANTUR RITE ESSE ACTA* was held in **GPHA v NOVA COMPLEX LTD [2007-2008] 2SCGLR 806** that “it expresses in summary form the principle where there is proof of performance of an official act, until the contrary is proved that act is presumed to have been done in compliance with necessary formalities and the person who did it is presumed to have been duly appointed.” In effect the presumption is a rebuttable one which was described in Section 19 of NRCD 323 as “An enactment providing that a fact or a group of facts is prima facie evidence of another fact creates a rebuttable presumption”.

The question now is how can this presumption be displaced. Section 20 of NRCD 323 “imposes upon the party against whom it operates the burden of producing evidence and the burden of persuasion as to the non-existence of the presumed fact”. See **GPHA v NOVA COMPLEX** (supra). The Respondent relied on the presumption in support of his search which on the face of it is regular and emanated from the Registry. The presumption **operates** against the applicant however the applicant also discharged the burden of rebutting the presumption by relying on Exhibit D which is also a search from the same registry. As noted earlier in the ruling, what is intriguing about both searches is that the common question of **WHETHER OR NOT THE STAY OF EXECUTION FILED ON 6<sup>TH</sup>**

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MAY 2021 WAS STRUCK OUT ON 4<sup>TH</sup> MAY, 2022, was answered in the affirmative in Exhibit D and in negative in Exhibit C. In other words, both searches provided different answers to the status of the motion for stay of execution of 6<sup>th</sup> May 2021. In Exhibit D the question was:-

- (1) WHETHER OR NOT THE APPLICANT'S MOTION FOR STAY OF EXECUTION WAS STRUCK OUT ON WEDNESDAY, THE 4<sup>TH</sup> DAY OF MAY 2022? YES. However in
- (2) IF YES TO ISSUE 1, WAS IT STRUCK OUT FOR WANT OF PROSECUTION? YES. Similarly in Exhibit C, the question was
  - (1) WHETHER OR NOT THE MOTION ON NOTICE FOR STAY OF EXECUTION DATED 6/5/21 WAS MOVED? NO
  - (2) IF SO WHEN? N/A.
  - (3) WHETHER OR NOT THE PLAINTIFF WAS SERVED WITH A COPY OF THE SAID MOTION? NO.
  - (4) IF SO WHEN? N/A.

Both searches emanate from the same registry and therefore enjoy the benefits of the presumption of regularity as codified in Section 37 of the Evidence Act 1975 NRCD 323. It will take a superior evidence to rebut the presumption and also to unravel the mystery surrounding the conflicting answers in Exhibits C and D. Who else will the Court turn to than the Registrar Musah Mohammed of Tamale High Court. Mohammed Musah the Registrar was summoned on 4<sup>th</sup> day of July 2023 to give evidence in order to unravel the mystery of the two searches. The following dialogue ensued:-

Q: Look at Exhibit D which is a search emanating from Lawyers of the Judgment/Creditor to be exact Alhaji Mohammed shaibu Abdullai Esq. Does that search require reference to the proceedings before attending to the search?

A: Yes, part of the questions require court proceedings and some do not require court proceedings.

Q: Tell this court which part requires court proceedings and which part do not require the proceedings?

A: Question 3 – Kindly attached record of proceedings

Q: And which part do not require the proceedings?

A: Question 1 and 2

Q: How did you answer 1 and 2

A: By referring to the docket

Q: If you say referring to the docket, what do you mean?

A: Referring to the summary of the sitting on that day

Q: Look at the summary of 4<sup>th</sup> May 2022 and tell the court the summary of the sitting on that day.

A: There is no sitting on 4<sup>th</sup> of May 2022 on the docket

Q: Did the search filed on 23<sup>rd</sup> June 2023 emanate from your registry?

A: No my signature is not on the search.

As regards the search (Exhibit C) of the Defendant/Judgment/Debtor/Respondent, this is what the Registrar of the High Court has to say:-

Q: Take a look at the search filed on 10<sup>th</sup>/5/2023 by Sylvester Isang Esq. did the search emanate from the registry (Registrar shown the search).

A: Yes

Q: Why did you say so?



A: The filing stamp is on it and my signature and stamp is on it.

Judging from the evidence of the Registrar prima facie the authentic search which emanated from the registry of the High Court is the one filed by the lawyer for Defendant/Judgment /Debtor/Respondent and it has been authenticated by his signature and stamp. The court adjourned the matter for ruling on 10<sup>th</sup> July 2023 however it noted that the parties to this action were not given opportunity to cross-examine the Registrar and to add to, the Registrar was not discharged. On the 10<sup>th</sup> day of July 2023 the Registrar was cross-examined by the applicant's Counsel and the following discourse took place:-

Q: When one is to conduct a search at the registry, whose duty is it to answer the search?

A: I answer the search

Q: Have you ever delegated this duty to any other officer of the court?

A: No my Lord

Q: Any search emanating from your registry within your tenure is deemed to be signed by you?

A: Yes

Q: It is the requirement that after a search is duly filed at the Registry and answered by you, your signature and stamp must be on it aside the filing stamp?

A: Yes my Lord

Q: So it will be a breach of duty when you did not sign or stamp a search document after answering same?

A: Yes my Lord

Q: Can you identify your handwriting when shown to you (witness shown document).

A: Yes my Lord

Q: Take a look at Exhibit D and identify if it is your handwriting?

A: yes it is my handwriting but if you look at question 3 how I write the letter "Y" it has been altered.

Contrary to his earlier evidence before the court the above cross-examination elicited monumental admission from the Registrar with regard to the authorship of the answers in Exhibit D. His failure to sign and stamp Exhibit D in his own words constitute a breach of duty.

The application posed two fundamental questions namely:-

- (1) Which of the two searches reflect the true state of affairs of the motion for stay of execution dated 6/5/21
- (2) Was the stay of execution dated 6/5/21 pending or struck out before the Court granted leave to Plaintiff/Judgment/Creditor to issue writ of possession on 10/5/2023.

In dealing with the above mentioned questions examination of Exhibits C and D and the court's record will engage the attention of the court.

### **ANALYSIS OF EXHIBITS C AND D**

From the answers given on exhibit C, the obvious question is if the motion for stay of execution was not moved and the Plaintiff was not served with the motion then how was the said motion struck out? My inquiries in the docket revealed that a private process server by the name Iddrisu Adam swore to an affidavit of service on 10<sup>th</sup> May 2021 to the effect that he was entrusted with a motion notice for stay of execution on 6<sup>th</sup> May 2021 and at 4.47pm he served Mohammed Shaibu Esq. through his secretary Yakubu.

Also noteworthy is the fact that an affidavit in opposition to the said motion deposed to by one Yakubu Sulemana Asuro, a clerk of Lugu Law Chambers was filed on 21/6/2021. The answer to most vexed question in this proceeding and which launched the war of the motions is question 1 on Exhibit C which stated that the motion for stay of execution was not moved is entirely false. There is nothing on the summaries entered on the docket which indicated that the motion was moved or not moved. However my inquiries from the record book indicated that the following occurred on 4/5/2022:-

IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT OF  
JUSTICE SITTING AT TAMALE ON WENESDAY 4<sup>TH</sup> MAY 2022 BEFORE  
HIS LODSHIP JUSTICE RICHARD M. KOGYAPWAH

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SUIT NO E1/117

ABUBAKARI IDDI

V

ZAKARIAH ALHASSAN & 5 ORS

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Parties: Plaintiff absent but represented by Abubakari Mohammed Tijani  
Defendant absent

Alhaji Mohammed Shaibu Abdullai for Plaintiff

**By Court:** Since Counsel for Defendant/Applicant has not been needful, I will strike out the motion for stay of execution for want of prosecution.

(SIGNED)

The above proceedings vindicated the search on Exhibit D. The attempt by the Registrar to downplay Exhibit D is most unfortunate and can be viewed as an attempt to justify his false answers on Exhibit C. In furtherance of his ignominious objective, he deliberately did not sign and affixed his stamp on Exhibit D but truth like cork always floats on the water. His attempt to put a label of authenticity on Exhibit C backfired. The most reprehensible aspect of his conduct is to impugn the integrity of the search of Alhaji Mohammed Abdullai Esq. counsel for the applicant who annexed Exhibit D to his application. It is therefore imperative to hold that following the admission of the Registrar and the evidence available to the court Exhibit C and its contents cannot enjoy the protection of Section 37(1) NRCD 323. Similarly the High Court Registrar, Tamale cannot also enjoy the protection of the above mentioned section. I am fortified in my view by NRCD 323 (supra) which allow the presumption of regularity to apply only to lawful acts.

In respect of public officials like the Registrar of the High Court, Tamale, the principle comes into play only when they have acted with proper motives, have not lied and have generally comported themselves as ethical. In **GPHA Captain Zeim v NOVA COMPLEX LTD [2006] DLSC 2421**. The court quoting a passage from Broom's Legal Maxims (10<sup>th</sup> edition) in relation to the Maxim said:-

“..... the following may be mentioned as general presumption of law illustrating this maxim – that a man, in fact acting in a public capacity was property appointed and is duly authorized so as to act; that in the absence of proof to the contrary credit should be given to public officers who have acted prima facie within the courts of their authority, for having done so with honesty and discretion”. Is the conduct of the Registrar of High Court Tamale worthy of being tagged with the label of honesty and lawful discretion? Absolutely not.

The ignominious conduct of the Registrar has compromise the integrity of documents emanating from his registry and I condemn it in no uncertain terms.

In view of the foregoing I arrived at the following conclusions:-

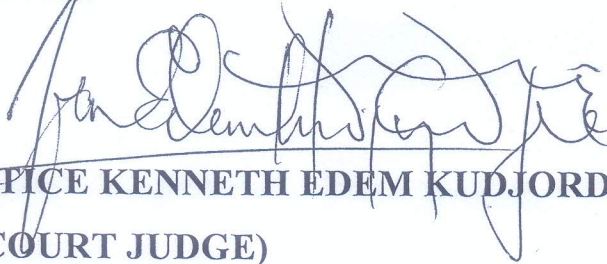
1. I conclude that Exhibit C is a document calculated to mislead the court and its contents constituted a misleading state of affairs of the status of the motion for stay of execution filed on 6/5/21.
2. I therefore find that the motion for stay of execution filed on 6/5/21 was struck out for want of prosecution on 4/5/22 by his Lordship Justice Richard Kogyapwah sitting as a High Court Judge.
3. I also find that this court was misled by Exhibit C of the defendant which was a product of dishonest conduct of the Registrar of the High Court, Tamale and the dishonest conduct involved concealing vital information relevant to the consideration of the application before the court on 16/6/2023.
4. The application is therefore granted.

Consequently I therefore make the following:-

1. The order which set aside the order for leave to issue writ of possession dated 16/6/2123 is hereby vacated.

2. The order dated 10/5/23 which granted leave for Plaintiff/Judgment/Creditor to issue writ of possession is hereby restored.

I also as matter of urgency direct Regional Administrative Officer of the Judicial Service, Tamale to refer the conduct of Mohammed Musah, Registrar of High Court, Tamale to the Chief Justice for investigations into his conduct. There is no order as to cost.



H/L JUSTICE KENNETH EDEM KUDJORDJIE  
(HIGH COURT JUDGE)

**COUNSEL:**

ALHAJI MOHAMMED SHAIRBU ABDULLAI EQS. FOR  
PLAINTIFF/JUDGMENT/CREDITOR APPLICANT

SYLVESTER ISANG EQS. FOR RESPONDENT/JUDGMENT/DEBTOR

cc: Regional Administrative Officer, Judicial Service Tamale

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