

IN THE SUPERIOR COURT OF JUDICATURE

IN THE COURT OF APPEAL

ACCRA – A.D. 2023

**CORAM: HENRY KWOFIE, JA (PRESIDING)
SOPHIA BERNASKO-ESSAH, JA
KWEKU T. ACKAAH-BOAFO, JA**

NO. H3/209/2023

15TH MARCH, 2023

1. ALBERT JOOJO OCANSEY (SUBSTITUTED BY SIGISMUND OCANSEY)		PLAINTIFF/RESPS./APP.
2. CHARLES FIIFI OCANSEY (SUBSTITUTED BY GIFTY NARTEY)		2ND PLAINTIFF/RESPONDENT
3. SHAKINAH BAAH		3RD PLAINTIFF/RESPONDENT
VRS		
F. F. FIANKO-AWUKU & 3 OTHERS		DEFS/APPELLANTS/RESPS
TERESA OCANSEY		APPLICANT

RULING

KWEKU T. ACKAAH-BOAFO, JA:

i. Introduction:

[1] The application before us is for an order to set aside the Order of this Court differently constituted dated December 15, 2020 which substituted Gifty Nartey

for Charles Fiifi Ocansey (deceased) the original 2nd Plaintiff in this case and for a further order of substituting Teresa Ocansey for Charles Fiifi Ocansey. The application was filed on 10th February, 2023 and is supported by the affidavit and supplementary affidavit of Christian Hammond sworn on 10th February, 2023 and March 13, 2023 respectively.

- [2]** The pith and substance of the application is that Madam Gifty Nartey is not a beneficiary of the Will, the subject matter of the suit which is on appeal and was not instructed by the beneficiaries. It is also contended that the written submission filed by Gifty Nartey through her Counsel "is contrary to the case put forward by the father of the Applicant in the High Court". And, as a result should she be allowed to remain a party the interest of the beneficiaries of the estate of Charles Fiifi Ocansey stand to suffer by her actions.
- [3]** The application is opposed by Gifty Nartey, the 2nd Plaintiff and on March 9, 2023 she filed an affidavit in opposition. There is also an affidavit of one Kwesi Tetteh Dadzie, who describes himself as the "Head of Family of the late Charles Ocansey Snr's Family" also filed on March 9, 2023. Madam Nartey's prayed the Court to dismiss the application on the grounds that the order made by this Court differently constituted was validly made without any defect because the Head of family and the larger customary family nominated her to be a party. She denied the depositions of the Applicant and deposed that the written submission filed will not in any way adversely prejudice the interest of the estate of the late Charles Fiifi Ocansey. The affidavit of Kwesi Tetteh Dadzie re-echoed the depositions of Madam Nartey to the effect that she was nominated by the larger family and her presence as a party will not injure, prejudice or harm the case of the estate.

ii. The Submission of Counsel:

- [4]** Speaking to the application, Counsel for the Applicant submitted that the 2nd Plaintiff's presence as a Plaintiff harms the interest of the Plaintiffs/ Respondents because the submission filed by her Counsel is at variance with the position of the Plaintiffs/Respondent and undermines the judgment of the court below, which they as Plaintiffs are to defend in this Court. Counsel referred to paragraph 9 of the supplementary affidavit by which reference is made to page 1, paragraph 2 of the written submission filed for Gifty Narthey. The said paragraph states:

"My Lords, the 2nd Plaintiff/Respondent on the other hand is praying this Honourable Court to uphold the judgment of the High Court dated 10th July, 2009 in part and declare that the estate of the late Charles Ocansey has fallen into intestacy and that the Intestate Succession Act, 1985 should apply to the administration of the late Charles Ocansey".
[Emphasis Mine].

- [5]** Counsel further referred to page 25, paragraph 109 of the submission by which the 2nd Plaintiff prays the Court to make an order for the estate of the late Charles Ocansey to be shared in accordance with the Intestate Succession law, 1985 and submitted that even if the estate is to be distributed in accordance with the Intestate Succession Act, the beneficiaries will have priority over the larger customary family and therefore the Applicant as a beneficiary should rather be the party, and not the 2nd Plaintiff herein, Gifty Narthey. Counsel further contended that the order made is not in the interest of the beneficiaries of the estate of the late Charles Fiifi Ocansey and this Court should set it aside and the Applicant rather substituted in the stead of the deceased, Charles Fiifi Ocansey.
- [6]** Responding to the arguments of Counsel for the Applicant, Counsel for the Respondent submitted that the instant application is without merit and should be

dismissed. Counsel referred to paragraph 6 of the Applicant's supplementary affidavit and submitted that the 2nd and 3rd Plaintiffs prayer at the Court below, which was that the 14th March, 2002 purported Last Will and Testament of Charles Ocansey is not his deed and act was upheld by the Court and revoked. According to Counsel, after holding that the March 2002 purported Will and Testament was not valid, the Court went ahead to state that there is a 10th October 1998, Last Will and Testament of the deceased and therefore that should take the place of the March 2002 Will. Counsel submitted that the 1998 Will was not before the court below and therefore the Defendants/Appellants have appealed against the judgment.

- [7]** According to Counsel the 2nd Plaintiff's position based on the written submission filed does not prejudice the Plaintiffs/Respondents case because all she has done is to draw this Court's attention to the fact that it could confirm part of the judgment and declare part of the estate to have fallen into intestacy because the October 10, 1998 Last Will and Testament was not before the court below. This according to Counsel is to pre-empt the likely conclusion of this Court that the court below erred and was wrong to have made orders based on the 1998 Will. Counsel also referred to the facts that the beneficiaries are all based outside the jurisdiction and it is rather the 2nd Plaintiff whose presence is helping to expedite the appeal. Based on all of the above, Counsel prayed the Court to dismiss the application.

iii. The Court's Opinion:

- [8]** Now, it is worth recalling that this is an application to set aside an order made by this Court differently constituted and to in effect replace the 2nd Plaintiff with the Applicant. The power of this Court to set aside its previous orders to our minds, is anchored in the general powers of the Court as provided for under Rule 31 of C.I. 19 and the inherent powers of the Court that are necessary to determine the appeal before it. In exercising this power of the Court, we are of the opinion that there ought to be a cogent and compelling reason(s) for this Court to set aside its

previous order(s). Has the Applicant provided cogent and compelling reasons for us to exercise the said powers?

[9] The record per Exhibit "B" show that the 2nd Plaintiff herein was joined to the suit as a Plaintiff per the order of substitution of a single judge of this Court dated December 15, 2020. The order was granted based on an ex-parte application filed. As argued by the Applicant's counsel they only became aware after the order and after the filing and service of the written submission. Having reviewed the written submission, the affidavits filed and hearing from Counsel and based on the facts presented, we are satisfied that the application should be granted. It is without doubt that parties are housed at one end of a litigation as Plaintiffs if they are factually connected and their interest are not adverse. As Plaintiffs in whose favour the court below delivered its judgment, it cannot be denied that they should be seen from 'singing from the same hymn sheet' and not otherwise. The written submission referenced by Applicant's Counsel and stated elsewhere in this ruling, which was rehashed by the Respondent's counsel is a clear confirmation that Madam Nartey by that position is rather projecting the position of the Appellants in this appeal and not defending the judgment, which was in favour of the Plaintiffs and is the subject matter of the appeal. That, certainly prejudice and harm the position of the Plaintiffs in this case. The written submission filed on behalf of the 2nd Plaintiff, Gifty Nartey shows she is adverse in interest and has separate interest to protect in so far as she is praying the court to declare part of the estate to have fallen into intestacy. That clearly makes her not a suitable and necessary person as a Plaintiff in this appeal.

[10] That being so, it is our opinion that the Applicant has demonstrated that the 2nd Plaintiff has an adverse interest to that of the beneficiaries and this Court differently constituted would not have granted the application for substitution if that information was available. We shall consequently grant the application as prayed. The order of December 15, 2020 is hereby set aside and Charles Fiifi Ocansey is hereby substituted by Teresa Ocansey.

SGD

**JUSTICE KWEKU T. ACKAAH-BOAFO
(JUSTICE OF THE COURT OF APPEAL)**

SGD

**JUSTICE HENRY KWOFIE
(JUSTICE OF THE COURT OF APPEAL)**

SGD

**JUSTICE SOPHIA BERNASKO-ESSAH
(JUSTICE OF THE COURT OF APPEAL)**

COUNSEL:

ROBERT PAPPOE FOR APPLICANT & 1ST PLAINTIFF/RESPONDENT.

SIKA ABLA ADDO FOR 2ND & 3RD PLAINTIFFS/RESPONDENTS/RESPONDENTS.

MIRANDA-BANNERMAN QUARTEY FOR DEFENDANT/RESPONDENT.