IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT OF JUSTICE HELD IN ACCRA ON WEDNESDAY THE 13TH DAY OF AUGUST, 2025 BEFORE HIS LORDSHIP KENNETH EDEM KUDJORDJIE, J.

SUIT NO. FAL/950/2014
TIME: 10:16AM

BENJAMIN AMARTEY MENSAH - PLAINTIFF

VS.

REGIMANUEL GRAY LTD. & 6 ORS - DEFENDANTS

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PARTIES:
PARTIES ABSENT

LEGAL REPRESENTATION:
AGBESI DZAKPASU FOR APPLICANT PRESENT IN RESPECT OF THE APPLICATION FILED ON 11TH JULY, 2025 PRESENT

PETRINA DEFIA H/B FOR OSAFO BOATENG FOR 1ST DEFENDANT/APPLICANT PRESENT

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Applicant C: We have before you a Motion on Notice for Stay of Execution and a further order setting aside the order for possession dated 24th June, 2025.

In summary, this Honourable Court granted a recovery of possession in excess of a land of over 100 acres. It was a conditional judgment but it was stipulated that in the event of failure to satisfy condition precedent, the Judgment Creditor can go into execution. The Court granted an order for

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HIGH COURT, ACCRA
LAND DIVISION - LCC

recovery of possession; however, this application was served only on the 1st Defendant though 1st Defendant has sold the land to 3rd parties, a fact admitted by the Judgment Creditor in an Affidavit in Opposition.

When they made the application before the Court, they did not disclose this to the Court. Order 43 rule 3(3) stipulated that leave shall be granted except the parties in occupation shall be given notice. None of the parties had notice of the matter in Court and no notice was served on them.

Due to the said order, the Respondent has demolished properties of innocent property owners even though they have not been served with the order.

We further pray that because of the land guards placed on the land, guards should be driven out of the land by National Security.

1st Deft/Appl C: We are not opposed to the application of the applicant. We have before you a stay of execution pending appeal on 26th June, 2025.

Plaintiff/Respondent filed an Affidavit in Opposition on the 3rd of July, 2025. There is a compelling ground for the granting of the application. We rely on all the depositions in the Affidavit in Support. We

highlighted that the Respondent considered that this land was lawfully acquired by the 1st Defendant/Applicant.

We refute the argument of the Plaintiff/Respondent that the land they sought to recover possession was in respect of vacant lands. The exhibits attached to our affidavit depicts houses already developed by 3rd parties. Also, persons in possession were not served with the notice of proceedings as evidenced by the search annexed to our affidavit. They are also attempting to sell to 3rd parties.

By Court: **RULING**

The first application focuses on absence of notice given to occupants of the lands affected by this judgment before leave was granted to the Judgment Creditors.

Before I commence my ruling, I will state that today's date was agreed by the parties for the hearing of the application before the Court differently constituted hence notwithstanding the letters from the Plaintiff/Judgment Creditor seeking postponement of the application in the light of the issues raised in the application which threatened the lives and properties of the applicants and others on the land concerned.

I will consider the application on the basis of the affidavit filed by the Respondent. See **Republic v. High Court, Ex parte Eastern Alloys Co. Ltd [2007-2008] SCGLR 371 at 373.**

In his acclaimed book 'As Man Thinketh', the author James Allen, at page 15 opined that;

> *"law not confusion is the dominating principle in the universe. Justice not injustice is the soul and sustenance of life".*

From the above words, one can deduce that the aim of law is not to cause confusion but to ensure peace and stability in civil society. The Courts exists to uphold the law to the extent that a judgment or order which emanated from the Court is to ensure clarity, certainty, peace and to champion the ideals of justice. So that, if a judgment has been delivered and the enforcement of the judgment does not champion the ideals of justice, but creates confusion, an application to the Court will invoke its discretionary jurisdiction to make orders which may appear to be just. See order 43 rule 11.

This application centred on matters which occurred after the judgment, various evidence as exemplified by exhibits annexed to the application of the applicants clearly depicts properties and attacks on persons creating mayhem in the estate occupied by

the applicants. The fact that judgment has been awarded in favour of the Judgment Debtor does not give him/her the licence to go into execution except by leave of the Court. To ensure that enforcement of the judgment accords with the notion of justice, Order 43 rule (3) mandates that the occupiers of the lands subject to the enforcement of the judgment shall be given notice before leave is granted for possession of the immovable property.

From the evidence provided by the applicants, the said notice was not served on the applicants, more especially when they were not parties to the suit with the exception of the 1st Applicant. It will therefore be unjust if the application is refused, to borrow the words of Georgina Wood CJ in **Agbosu v. Kotey [2003-2005] 1GLR 685**.

In the circumstances, similar in some respects to the present case where an order was directed at beneficiaries of the Judgment Debtor who were never parties to the substantive case, she said;

"I see an order directed at the beneficiaries who were never parties to this action who have acquired lands from the Defendants but who were however not heard in this proceedings contrary to the fundamental and plain rule of natural justice, the audi alteram partem rule".

The Courts have the power to vacate its orders if it goes contrary to the notions of justice. See **Republic v. High Court (Commercial Division A, Tamale), Ex-parte Kaleem [2015] JELR 68950 (SC).**

In the light of the above reasons, I humbly vacate the order which gave leave to the Plaintiff/Judgment Creditor to recover possession of the immovable property subject of the judgment delivered by the Court on 8th March, 2024. I also direct the Ghana Police Service to ensure that the present order is fully carried out.

RULING IN RESPECT OF THE 2ND APPLICATION

The judgment delivered by my learned brother on the 8th of March, 2024 was somewhat conditional in the sense that it enures to the benefit of the judgment. However, its enforcement was subject to the condition precedent i. e there should be a valuation by the Lands Commission and thereafter the parties should negotiate a fair price for the lands occupied by the Defendant.

I have noted that the Applicant has filed a Notice of Appeal challenging the said orders of the High Court. With the appeal against the conditional precedent pending and also with the possibility of the execution being enforced against the 3rd parties as they are

beneficiaries of the acquisition of the land now adjudged to be wrongly acquired and who have not been heard in the interim, it will be unjust for the execution of the judgment to proceed as it will militate against the principle of natural Justice considering the fact that the enforcement of the judgment has already resulted in the demolishing of some properties of innocent purchasers and persons who were not parties to the substantive action. It will be in the interest of justice if the execution of the judgment is stayed pending the resolution of the issues surrounding valuation of the immovable property in occupation of the Defendant and its beneficiaries.

On the balance of hardship, the Plaintiff/Judgment Creditor at the end of the day will eventually be adequately compensated should he be victorious at the Court of Appeal. On the other hand, the properties of the Defendant and innocent persons will be demolished and it is doubtful if the applicants can be put back in the same state should they be victorious at the Court of Appeal.

For the above reasons, this Court grant the application as prayed for.

(SGD.)

KENNETH EDEM KUDJORDJIE, J.
JUSTICE OF THE HIGH COURT

