

**IN THE SUPERIOR COURT OF JUDICATURE
IN THE COURT OF APPEAL
ACCRA**

CORAM: MARGARET WELBOURNE J.A. (PRESIDING)

BRIGHT MENSAH J.A.

JANAPARE A. BARTELS-KODWO J.A.

CIVIL APPEAL NO. H1/77/2020

23rd MARCH, 2023

ALBERT BADU OKUADJO & ANOR PLAINTIFF/APPELLANT

VS

- | | | |
|---------------------------------|-------------|--|
| 1. GABRIEL KOKOU DAOSSRA | | 4TH DEFENDANT/RESPONDENT |
| 2. ASAFOATSE ATUO BOBLE | | 5TH DEFENDANT/RESPONDENT |
| 3. REV. BENJAMIN KOTEY | | 6TH DEFENDANT/RESPONDENT |
| 4. PRINCE NEEQUAYE ASHIE | | 7TH DEFENDANT/RESPONDENT |

AND

- | | | |
|----------------------------------|-------------|--|
| 1. STAFF SERGEANT FRANCIS | | 1ST DEFENDANT/RESPONDENT |
| DOE KOKU AHIATOR | | |
| 2. WISDOM KOSI AZAMETI | | 2ND DEFENDANT/RESPONDENT |
| 3. RAPHAEL FATHER | | 3RD DEFENDANT/RESPONDENT |

JUDGMENT

BARTELS-KODWO J.A

Following an application by the 4th – 7th Defendants/Applicants praying the trial court for an Order to dismiss the instant action and or to strike out the Amended Writ of Summons dated 15th August, 2016 purporting to annex a Statement of Claim dated 29th May, 2015, the trial High Court granted same and set aside the Writ citing same to be defective because though the amended Writ had the names of all (7) seven Defendants, the attached Statement of Claim had only the names of (3) three of the defendants and was dated 29th May, 2015 as against the Amended Writ which was dated 15th August, 2016.

Dissatisfied with that Ruling of the Court dated 28th February, 2019 the Plaintiffs/Appellants filed an amended Notice of Appeal dated 30th April, 2021, pursuant to a court order of 27th April, 2021 seeking to set aside the ruling and to have the suit restored to the record for trial.

Their single ground of Appeal is that the Ruling is unwarranted by Order 4 of the High Court (Civil Procedure) Rules 2004 CI 47 and the related provisions which deal with joinder of parties under the High Court Rules.

The Plaintiffs will be known as the Appellants in this ruling and the Defendants as the Respondents.

Brief Facts:

From the Record it is clear that upon a grant of an application for joinder to the Suit by the 4th -7th Respondents same was granted and the Appellant directed to amend the suit to include the newly joined parties i.e. the 5th , 6th, and 7th Respondents. This was done and a photocopy of the Statement of Claim was attached to the Writ and this was served on the Respondents. See ROA 39-41 & ROA 49-54. This was followed by the Defendants/Respondents entering appearance and filing their Defence to which the Appellants also filed their Reply.

Following this, the application resulting in the Ruling in contention here was granted with the reasons earlier mentioned in this present Ruling stating why the Suit ought to be set aside since what actually occurred was that the Writ was amended but the accompanying Statement of Claim was not amended to reflect the parties in the Suit.

Appellant's arguments:

The Appellant refers to Order 4 Rule 5 of CI 47 the High Court Civil Procedure Rules 2004 as the relevant provisions that guide parties upon an Order for joinder on how they should proceed. See below:

5. *(1) No proceedings shall be defeated by reason of misjoinder or non-joinder of any party; and the Court may in any proceeding determine the issues or questions in dispute so far as they affect the rights and interests of the persons who are parties to the proceedings.*
- (2) *At any stage of proceedings the Court may on such terms as it thinks just either of its own motion or on application*
 - (a) order any person who has been improperly or unnecessarily made a party or who for any reason is no longer a party or a necessary party to cease to be a party;*

(b) order any person who ought to have been joined as a party or whose presence before the Court is necessary to ensure that all matters in dispute in the proceedings are effectively and completely determined and adjudicated upon to be added as a party.

- (3) *No person shall be added as a plaintiff without that person's consent, signified in writing or in such other manner as may be authorised by the Court.*
- (4) *Any application by any person for an order under sub rule (2) to add that person as a party shall be made by motion supported by an affidavit showing the person's interest in the matter in dispute before or at the trial.*
- (5) *When an order is made under sub rule (2), the writ shall within fourteen days after the making of the order or such other period as may be specified in the order, be amended accordingly and indorsed with a reference to the order in pursuance of which the amendment is made and with the date on which the order for the amendment is made.*
- (6) *Where under this rule a person is ordered to be made a defendant, the person on whose application the order is made shall procure it to be noted in the Cause Book by the Registrar and after it is so noted*

 - (a) *the amended writ shall be served on the person ordered to be made a defendant; and*
 - (b) *the defendant so served shall thereafter file an appearance.*
- (7) *A person ordered under this rule to be added as a party shall not become a party until the writ is amended in relation to the person under this rule and, if the person is a defendant, the writ has been served on the person.*

Learned Counsel for the Appellant submits that upon the grant of the application for joinder it was necessary that the Plaintiff add the names of the new Defendants to the title of the suit indicating the order of court warranting the amendment as was done and hence the amended Writ of Summons did not have a defect. The trial judge he noted admitted this hence how did he then arrive at the conclusion that the Writ as amended and the service of it together with a copy of the Statement of Claim was defective? He put the question also whether the Appellants are to amend the Statement of Claim per the Ruling in terms of the title to include all the Defendants and if so what happened to the title on all the documents the Defendants were to be served with? Learned Counsel held the view that the Court was wrong in coming to its conclusions as far as the rules of court are concerned.

He argued further that the court seemed to have ruled in the manner in which it did because it was swayed by the arguments of the Respondents who brought their application to have the suit dismissed anchored on Order 2 rule 6 and Order 11 rules 1 and 2 of CI 47 which do not apply to the obligation of a Plaintiff to amend the Writ of Summons pursuant to an order for joinder since they deal with the initiation of actions. Hence the initiation of every suit should be accompanied by a Statement of Claim under the current rules which was not the case with the old Civil Procedure Rules. Thus this has nothing to do with the joinder of parties. He refers to the case of **Ashanti Goldfields V Liner Agencies and Trading (Ghana) Ltd [2003-2005] 2 GLR 74** which points the way forward upon an application for joinder. Since it was required that the new parties be served with all the copies of all the processes filed prior to the grant of the application for joinder which they did, this could not render the further amended Writ of Summons defective. The title of any such processes he submitted could only be amended upon specific application to do so. Hence it is the title of the processes filed after the grant of the joinder that needed to be amended to include the names of the new Defendants. Their Amended Writ of Summons was therefore valid. Besides the

Respondents having taken a step by entering appearance and filing a Statement of Defence cannot be heard to be complaining now. Accordingly the Appellants also filed a Reply to the Defence therefore the filing of a further amended Writ of Summons did not offend any rules or law to warrant the Writ being set aside hence this Appeal should be allowed to enable the Suit restored for trial.

Respondents' Arguments:

Learned Counsel for the Respondent argues that by the Rules of Court under Order 82 Of CI 47 a Writ is defined as including a Writ of Summons and a Statement of Claim hence the two must be read together in order to achieve the objective of Order 1 rule 1 (2). He puts the question then whether it is right for the Appellant to amend the parties on the Writ without amending the accompanying Statement of Claim and whether he could file the two on different days as though they were two different processes? In his view what constitutes a Writ under C.I. 47 should first of all be clarified. As far as he understood both order 82 rule 3 and Order 4 of CI 47 with regard to the mention of “a Writ” or “Writ of Summons” contemplates both the Writ of Summons and the Statement of Claim hence an order to amend the Writ of Summons meant that the Statement of Claim automatically also had to be amended.

It is not the case that the judge will intend the ‘writ alone’ hence the amendment of the writ without the other is non-complaint with the orders of court and same renders the Writ defective. He referred to the following orders:

Order 2 rule 6;

Writ and statement of claim

6. Every writ shall be filed together with a statement of claim as provided for in Order 11 and no writ shall be issued unless a statement of claim is filed with it.

and Order 2 rule 3 (1);

Contents of writ

3. (1) Every writ shall be as in Form 1 in the Schedule and shall be indorsed with a statement of the nature of the claim, relief or remedy sought in the action.

and Order 2 rule 1;

1. Subject to any existing enactment to the contrary, the party who commences civil proceedings shall be described as “plaintiff” and the opposing party shall be described as “defendant”

He argued that the basis and details of an indorsement on a writ can only be found in a statement of claim. The parties are also required to be endorsed on the Writ so they know what they are up against in the suit. Thus an application for joinder of parties flows naturally from the pleadings as per Order 4 rule 3 (1) (2) & (3). Hence a court can only grant an order for joinder by contemplating both the Writ and the Statement of Claim. Learned Counsel submitted that the reference to Exhibit 1 the copy of the Amended Writ which was exhibited by the Applicant is not an acceptance by the court that the Appellant had complied with the orders of the trial court to amend the writ. He cited the case of *AGBESI & ORS V GHANA PORTS AND HARBOURS AUTHORITY* {2007-2008} 1 SCGLR 469 @ 477 and stated that when the dictum therein is read together with Order 11 rules 1 & 2 the suggestion is that the identity of any suit at any stage of proceedings should be clear from the writ and statement of claim and all other processes to be filed, i.e. who the parties are etc and not only at the initiation of actions.

Learned counsel remains of the firm conviction that any reference to ‘writ’ as in Order 4 rule 5 (7) supra contemplates both the Writ and the Statement of Claim. Hence in amending the writ alone to reflect seven defendants without doing same to the

Statement of Claim which had three Defendants on it makes the amended writ filed defective since the parties ordered to be joined to the suit cannot be considered as parties to the action despite the court's order.

With regard to the issue of the Respondent having taken a step and thus cannot be seen to be complaining about the amendment of the claim now, learned counsel answers that once the court had made an order for joinder, the suit had been reset and the order goes to undo any previous processes prior to it. Thus their appearance and defence filed are of no effect since the Appellant failed to invoke the jurisdiction of the court by failing to comply with its orders.

Learned Counsel disagreed with his learned colleague's submissions on the ASHANTI GOLDFIELD'S case *supra* and submitted that same was decided under the old civil court rules and the ratio therein has no relationship to issues herein except that the procedural requirements that follow an application for joinder are not different from those under Order 4 and no distinction is drawn between an amendment of the writ and the statement of claim and the filing of same as they were two different processes. He prayed the Appeal is dismissed as same is without merit.

The sole ground of appeal that engages us is *whether the Ruling is unwarranted by Order 4 of the High Court (Civil Procedure) Rules 2004 CI 47 and the related provisions which deal with joinder of parties under the High Court Rules.*

The learned trial judge in his ruling stated thus *"As ordered by the court the Plaintiff amended the Writ of Summons to reflect the Joinder. A copy of the Amended Writ was exhibited by the Applicant as Exhibit 1. The Writ of Summons has all the seven names of all seven (7) Defendants on it. However a look at the attached Statement of Claim shows the names of only the three Defendants. A further look at the Amended Writ of Summons shows it was filed on the 15th of August 2016 and the Statement of Claim was filed on the 29th of May, 2015. This clearly*

shows the Writ defective for which reason I accordingly set aside same and grant the Respondent seven days leave within which to file a new one to correct the anomaly subject to cost of Ghc 500 against the Respondent.”

In considering an Appeal this court is expected to peruse all of the Appeal Record in order to determine whether the trial court on the available evidence failed to employ the evidence therein same in the Appellant’s favour which if it had done would have resulted in the Appellant being the victorious party.

The Appellant disagrees with the trial Judges’ ruling that the amended Writ of Summons was defective because attached to it is a copy of the earlier Statement of Claim which did not have the names of the parties for which an order of joinder had been granted pursuant to which the Writ was amended.

We have taken a look at our rules on joinder as well as read the AGBESI case *supra*. Under our present rules a Writ of Summons and Statement of Claim can be perceived as Siamese twins in the sense that they must travel together since one cannot issue a Writ without an accompanying Statement of Claim. Therefore if an initial Writ was issued suing a particular number of people and thereafter there is an application for joinder which is granted it does make legal sense that when the Writ is amended the Statement of Claim is also amended to reflect the names of all persons taking part in the litigation.

In this case the Appellant did not do so and attached a copy of the earlier Statement of Claim filed on 29th May, 2015 prior to the Amended Writ of Summons filed on 15th August 2016. In the Agbesi case *supra* the Supreme Court made reference to an earlier Supreme Court case of *AYIWAH V BADU* [1963] 1 GLR 86 where the apex court held that “(1) the leave to amend the writ and statement of claim *ipso facto* became void upon the plaintiff’s failure to take steps to implement it.” The court in the Agbesi case stated that by the authority in the *AYIWAH* case *supra* “an applicant in whose favour an

order of joinder or any order has been made has the duty to observe and implement the terms upon which the application has been granted to the letter.

There is therefore no gainsaying that since a Writ by implication consists of the Writ of Summons and the Statement of Claim because they travel together and as said in this ruling they are like Siamese twins what is the point of an amendment of the Writ as to parties without the Claim reflecting same when the whole purpose of an amendment in this nature is to let adversaries know who they are up against and what is expected of them? Since the Appellants failed to serve the amended writ together with a relevant statement of claim upon the grant of the order for joinder we are of the firm view that this renders the amended writ of summons defective more so when the date of the Claim predates the amended Writ of summons. In any case the trial court in setting aside the defective Writ granted the Appellants seven (7) days within which to rectify same and file it. They neglected to do so and rather went this route by mounting this appeal. From our overview of matters brought in this Appeal we are of the opinion that the trial judge was right in setting aside the Writ as being defective for the reasons given and also in line with the rules of court on joinder referred to earlier in this ruling. We therefore dismiss the Appeal.

(Sgd.)

JANAPARE A. BARTELS-KODWO (MRS.)

(JUSTICE OF APPEAL)

(Sgd.)

Welbourne, (J. A.)

I agree

MARGARET WELBOURNE (MRS.)

(JUSTICE OF APPEAL)

(Sgd.)

Mensah, (J. A.)

I also agree

P. BRIGHT MENSAH

(JUSTICE OF APPEAL)

COUNSEL:

- ❖ **Edward Dankwa Plaintiffs /Appellants**
- ❖ **Perry E. Amemornu for Defendants/Respondents**