IN THE SUPERIOR COURT OF JUDICATURE

IN THE COURT OF APPEAL (CIVIL DIVISION)

ACCRA – GHANA

CORAM: MARGARET WELBOURNE JA PRESIDING

P. BRIGHT MENSAH JA

JANAPARE BARTELS-KODWO JA

SUIT NO. H1/06/2023

19TH JANUARY 2023

BETWEEN:

ISAAC OWUSU AMPOFO … PLAINTIFF/APPELANT

vs

OBAK AUTOMOBILES LTD … DEFENDANT/RESPONDENT

-and-

GLICO GROUP LIMITED … RESPONDENT

JUDGMENT

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BRIGHT MENSAH JA:

The most prominent issue that has given rise to the instant appeal is whether Glico Group Ltd, the party that the plaintiff/appellant herein sought to join in the matter was/ is a necessary party and by extension, whether the learned trial judge in the court below exercised her judicial discretion properly when she refused to grant the application for the order of joinder.

As we proceed to examine the facts of the case and to make a determination as to whether the appeal has any merit at all, the plaintiff/appellant herein shall simply be referred to as the appellant, and the defendant/respondent and the respondent/ respondent, as the respondents.

Background facts:

The appellant issued a writ of summons in the registry of the Commercial Division of the High Court, Accra on 10/04/2019 against the respondent, Obak Automobiles Ltd endorsed with the following reliefs:

a) a declaration that the seizure or forfeiture of the buses by the defendant without complying with the tenets of the purchase agreement entered into between the parties as well as laid down statute/law renders the seizure/repossession unlawful and wrongful.

b) a declaration that the contract agreement under reference did not comply with the tenets of the Hire Purchase Act of Ghana thereby rendering the contract unenforceable under the Hire Purchase Act, Ghana.

c) a declaration that the purchase agreement between the parties was a contract for the sale of goods and thus governed by the Sales of Goods Act of Ghana.

d) recovery of cash the sum of Seven Hundred and Ninety four Thousand Ghana Cedis (Ghc794,000.00) being monies the plaintiff paid to the defendant under the agreement and interest thereon from the date of the wrongful/unlawful seizure/forfeiture till date of final payment.

e) recovery of cash the sum of Five Hundred and Fifty One Thousand Ghana Cedis (Ghc551,000.00) being monies expended in comprehensively insuring the vehicles, replacing the depleted tyres and

maintenance/servicing expenses from the defendant for unlawfully terminating the contract.

f) general damages for breach of contract.

g) Solicitor's cost.

See: ***pp 1 – 6 of the record of appeal [roa]***

It is on record that the respondent, Obak Automobiles Ltd per ***p.7 [roa],*** entered appearance to the writ on 18/04/2019 and did on 11/06/2019 file a statement of defence and counterclaim as appearing on ***pp 28-31.***

The appellant subsequently amended his writ of summons and the statement of claim. Per the endorsement of the amended writ of summons, the appellant then claimed against the respondent:

A. A declaration by the honourable court that the purported seizure/forfeiture of nine (9) Golden Dragon branded buses by the defendant without complying with the terms of the three purchase agreements entered into between the parties as well as laid down statute/laws renders the purported seizure/forfeiture/repossession wrongful and unlawful.

B. A declaration by the honourable court that any subsequent sale/disposal and/or transfer of the nine (9) Golden Dragon branded buses by the defendant to any other person and/or entity is null and void.

C. An order by the honourable court directed at the defendant to deliver/return the nine (9) Golden Dragon branded buses to the plaintiff in the condition they were prior to the supposed forfeiture/seizure.

OR

IN THE ALTERNATIVE to RELIEF C:

C (i) Recovery of the cash the sum of Seven Hundred and Ninety Four Thousand Ghana cedis (Ghc794,000.) being the monies the plaintiff paid to the defendant under the purchase agreements thereon from the date of the wrongful/unlawful seizure/forfeiture till the date of final payment.

(ii) Recovery of the cash the sum of Five Hundred Fifty One Thousand

Ghana Cedis (Ghc551,000.) being monies the plaintiff expended in comprehensively insuring the vehicles, replacing the depleted tyres and maintenance/servicing expenses from the defendant from unlawfully terminating the contract.

d. Damages against the defendants for breach of contract.

e. Any other appropriate relief(s) that the honourable court may deem appropriate in the circumstances of the case.

In response, the respondent amended its statement of defence and counterclaimed against the appellant as follows:

1. recovery of the sum of Seven Hundred and Sixty Thousand One Hundred and Thirty United States Dollars (US$766,130.) being the outstanding balance of the cost of the buses and interest thereon.

2. Interest on (1) above at a commercial rate from the date of purchase to the date of payment.

3. Damages for breach of contract.

4. Cost including legal fees.

Significantly, the appellant subsequently applied for joinder of Glico Group Ltd as a defendant in the matter appearing on ***pp 63-94 [roa]*** and filed a supplementary affidavit in support of the motion for joinder that appears at ***pp 124-147 [roa]***. In opposition, the respondent, Obak Automobiles Ltd filed its affidavit as appearing on ***pp 121-123 [roa]*** giving basis why the application for joinder must be refused.

On record, the lower court invited arguments from Counsel to the motion and that appears on ***pp 148-151 [roa].***

The lower court gave its Ruling on the matter dismissing the application. See: ***pp 151-152 [roa]***. In doing so, the learned trial judge delivered herself an opinion, the relevant portion of which is set out here in *extenso* as follows:

> *"<u>By court</u>*
>
> *The plaintiff/applicant filed motion on notice for an order joining Glico Group Ltd, Accra to the instant suit as 2nd defendant as a necessary party and for the avoidance of multiplicity of suits. The court per Order 4 rule 5(2)(b) of CI 47 is enjoined either on its own motion or on application order a party who is a necessary party to be joined to the suit to effectively and completely determine the dispute before the court.*
>
> *Upon listening to Counsel for the applicant and respondents and reading the affidavit in support of and in opposition to the motion as well as the exhibits attached to the respective affidavits, I am*

of the opinion that Glico Group Ltd, the entity the plaintiff/applicant is seeking to be joined to the suit as the 2nd defendant is not a necessary party to the instant suit.

In the result, the motion on notice for an order for joinder is dismissed."

It is against this Ruling that the instant appeal has been launched. Per a notice of interlocutory appeal filed 26/05/2022, the appellant complains:

1. The ruling of the court is against the weight of affidavit evidence.

2. The trial judge did not exercise her discretion judiciously in refusing the plaintiff/applicant/appellant's motion for joinder.

3. The trial judge grievously erred in law when she held that GLICO GROUP LIMITED is not a necessary party to the instant suit.

PARTICULARS OF ERROR OF LAW

i. The defendants/respondents in their pleadings claiming bona fide ownership of the disputed Golden Dragon buses without any reference to Glico Group Limited.

ii. As evidence of the said ownership, the defendant/

respondent/appellant filing counterclaim in respect of the Golden Dragon buses without any reference to Glico Group Limited.

iii. The defendant/respondent however claiming during the application for joinder that title to the disputed Golden Dragon buses was rather vested in Glico Group Limited.

iv. The defendant/respondent's counterclaim therefore incapable of being determined without joining Glico Group Limited to the instant action.

v. That the supposed title in the disputed Golden Dragon buses purportedly vested in Glico Group Ltd, the plaintiff/applicant would not be in the position to enforce any judgment which he may obtain against the defendant/respondent.

vi. The court failing to advert its mind to the fact that the refusal to join Glico Group Limited to the action would rather lead to multiplicity of suits/actions.

vii. The court failing to take into consideration the Amended Writ of Summons [with the endorsement thereon], the amended statement of defence and counter-claim filed by the defendant/ respondent before arriving at its conclusion.

viii. Failing to realize that Glico Group Ltd having transferred ownership of the Golden Dragon buses [which are the subject matter of dispute before the court], Glico Group Ltd was a necessary party to the instant suit/action.

4. Additional grounds of appeal would be filed upon receipt of the record of appeal. See: ***pp 153-156 [roa]***

So far no additional grounds of appeal were filed.

By this appeal, the appellant prays for the following:

1. An order reversing the entire ruling dated 13th May 2022 and further order joining Glico Group Ltd as 2nd defendant to the case.

2. An order that the case be placed before another High Court differently constituted. See: ***p. 155 [roa]***

The case & arguments of Counsel for the appellant:

It is the case of the appellant that somewhere on 16/012014 entered into two (2) separate contracts with the respondent for the purchase of three (3) separate Golden Dragon buses at the cost of US$385,000. payable within 12 months. According to the appellant, the payment schedule was subsequently reviewed to 18 months. Subsequently, in October 2014 the appellant further acquired 6 Golden Dragon buses for US$770,000. He spent some money to insure the buses and also fixed the tyres under the buses. The hire/purchase contract documents contained arbitration clauses which meant that in the event of disputes the parties were to resort to arbitration under the Alternative Dispute Resolution Act.

Pursuant to the agreement, according to the appellant, he issued some post-dated cheques to cover some advance monthly payments but they were to presented only when the respondent notified the appellant because the cheques were not dated. However, contrary to the agreement, the respondent presented the cheques without recourse to the appellant. Further, somewhere in the month of August 2015 the parties met for the restructuring of the payments of the cost of the buses. At the scheduled meeting, however, the respondent caused the arrest of the appellant whereupon he was sent to the Nima Police Station.

The conditions the appellant had to meet to secure his freedom at the Police was to hand over all the disputed buses to the premises of the respondent, appellant asserted further. The appellant claims he was subsequently arraigned before the Circuit Court, Accra charged with the offence of issuing dud cheques. However, he was acquitted and

discharged at the close of the case of the Prosecution. Regardless, the respondent went ahead to dispose of, and transfer the disputed buses to 3rd parties.

It is the case of the appellant, therefore, that both the seizure and sale or disposal of the disputed buses are unlawful and in contravention of the terms of the contract, hence the writ of summons.

In arguing the case for the appellant, learned Counsel drew the court's attention to the process the appellant had earlier filed in the lower court for the preservation of the disputed buses. The said motion appears on ***pp 8-22 [roa].***

According to Counsel, although it was a *motion exparte* the respondent nevertheless filed an affidavit in opposition to the application in which it was averred that the disputed buses had been transferred and or sold to third parties who had accordingly acquired interest in the said buses. Counsel drew the court's attention to some exhibits the respondent attached to the affidavit in opposition ie Exhibits 2 series appearing on ***pp 41-47 [roa]*** showing that ownership of the buses were now in Glico Group Ltd.

The basis for the application for joinder to Counsel is, insofar there is an existing sale/ purchase contract between the parties and there is the issue of ownership of the said buses but the respondent had transferred the said buses to Glico Group Ltd, it was imperative that Glico Group Ltd be joined to the case as a necessary party so as to avoid any multiplicity of actions.

Arguing all the grounds of appeal together, learned Counsel referred us to Order 4 r 5(2)(b) of the High Court [Civil Procedure] Rules, 2004 [CI 47] and the case law contained in the decision of the Supreme Court in ***Hammond v Odoi [1982-83] GLR 1215 @ 1235*** and stated the law rightly in our candid view, that in making the determination as to whether a party was a necessary party to be joined to a suit, the trial

judge was required to carefully examine the pleadings the parties filed; the affidavit evidence including the exhibits attached to the respective affidavits as well as submissions of Counsel.

It was Counsel's case if the respondents claim that Glico Group Ltd were now the legal owners of the disputed buses and in the strength of that assertion transferred ownership of the buses to 3rd parties, the question then arises as to the propriety or otherwise of the transfer. So, Glico Group Ltd should be defending the action.

Relying on the authority of ***Byrne v Brown [1889] 22 QBD 657***, the dictum of Esher MR, learned Counsel stated that the rationale for the application was to ensure that all matters in disputes were completely and effectively determined whilst avoiding multiplicity of suits.

Next, Counsel referred this court to ***Sam (No.1) v Attorney General [2000] SCGLR 102*** to opine that the court has the power to make such changes as regards the parties to enable an effective adjudication of all matters in controversy.

Concluding, he invited the court to allow the appeal and to join Glico Group Ltd in the matter.

The case & arguments of Counsel for the respondent:

First, learned Counsel submitted that there is nothing contained in the respondent's counterclaim that demands the presence of Glico Group Ltd as the 2nd defendant. To him, the case can proceed to a trial between the parties and a determination made on the counterclaim without regard to Glico Group Ltd as that entity has no business in the

substantive suit before the High Court. In support, Counsel relied on ***Soonboon Seo v Gateway Worship Centre [2009] SCGLR 278 @ 291***.

Furthermore, it was argued that the sale/purchase contact between the appellant and the respondent never had it contemplation, Glico Group Ltd, Counsel supporting his argument with S. 5(1) of the Contracts Act [Act 25]. He maintained that the impugned Ruling of the lower court was sound in law and was supported by the evidence on record.

Having relied on such cases as ***Amon v Raphel Tuck & Son Ltd [1956] 1 All ER 273*** and ***Bonsu v Bonsu [1971] 2 GLR 242*** Counsel insisted that there are no legitimate triable issues between the appellant and Glico Group Ltd. Therefore, the grant of the application would rather confuse the issues before the lower court.

Counsel, in the **circumstance**, asked that the appeal be dismissed.

Arguments on behalf of Glico Group Limited:

Their case was simply that the evidence before the lower court showed that they imported the disputed buses into the country for the benefit of Obak Automobiles Ltd, the respondent. Glico Group Ltd were therefore the legal owners thereof.

It was submitted on their behalf that apart from transferring ownership of the buses to persons who purchased them after Circuit Court has ordered their return to the respondent, Glico Group Ltd has nothing to do with the transaction between the appellant and the respondent.

Relying on S. 13 if the Hire Purchase Act, Counsel argued that Glico Group Ltd being the holders of the legal title as importers of the buses it was until title has been

transferred to Obak Automobiles Ltd the respondent as beneficial owners before the respondent could transfer title to the appellant.

It was their case, therefore, that Glico Group Ltd were neither a party to the transaction nor did they interfere in the contractual relationship the parties entered into but only facilitated the sale of the buses. Thus, Glico Group Ltd cannot be joined as a necessary party to the suit.

Legal analysis of issues & the opinion of this court:

We now proceed to discuss the merits or otherwise of the appeal.

To begin with, it is provided in **Order 4 r 5(2)(b) of the High Court [Civil Procedure] Rules, 2004 [CI 47],** the fulcrum of the instant appeal that**:**

> "(2) At any stage of proceedings the court may on such terms
>
> 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."

It is instructive that there was such a similar provision in the old rules, the **High Court (Civil Procedure) Rules, 1954 LN140A.** It was provided in **Order 16 r 11** in part as follows:

> "The court or a judge may, at any stage of the proceedings,

either upon or without the application of either party, and on such terms as may appear to the court or a judge to be just, order that the names of any parties improperly joined, whether as plaintiffs or as defendant be struck out and that the names of any parties, whether plaintiff or defendant who ought to have been joined, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the cause or matter, be added."

The overriding theme running through both rules of procedure herein referred to, is that the presence of the person sought to be joined is to ensure that all **"matters in dispute"** are effectively and completely determined and adjudicated upon by the court.

Now, what is the true ambit of the phrase **"matters in dispute"** necessitating the joinder to enable the court settle all the questions in controversy?

Much judicial ink has been spelt on the subject matter. Judges have differed in opinion as regards the grounds for joining a person whose presence is necessary for the effectual determination of a matter. By a stream of decided cases, 2 concepts lend themselves to critical scrutiny and analysis. There appears to be two views holding sway. Whilst one school of thought is for a narrow view, another school takes a wider position. Such cases as:

(i) ***Appenteng v Bank of West Africa Ltd. (1961) GLR 81***;

(ii) ***Bonsu v Bonsu (1971) 2 GLR 242;*** and

(iii) ***Zakari v Pan American Airways (1982-83) GLR 975***

illustrate the narrow view.

In analyzing what constitutes the test for joinder, Ollennu, J (as he then was) postulated in ***Appenteng v Bank of West Africa [supra] @ 82*** as follows:

> "In an application for joinder, the most important question which the court has to answer is: would the joinder of the party enable the court effectually and completely to adjudicate upon and settle all questions involved in the cause?
>
> If it would, the application should be granted; if it would not, the application should be refused."

His Lordship then proceeded to give some general guidelines. According to Ollennu, J, the court must first of all, look at the plaintiff's writ, his pleadings and the reliefs sought: if the Plaintiff makes no claim either directly or inferentially against the party sought to be joined, or if the claim could succeed without the party sought to be joined being made a party the application must be refused.

It is important to recognize that Taylor, J. (as he then was), yet another jurist of great repute adopting the Ollenu test and applying it in ***Bonsu v Bonsu [supra],*** added a rider that where an allegation that the respondent would be embarrassed was not specifically proved, the application ought to be refused. Among other reasons, Taylor J. refused the joinder in the case because an allegation of embarrassment was not specifically proved.

In ***Zakari v Pan American Airways Inc. (supra),*** Wiredu, J. (as he then was) also after stating the general rule, added yet another test. He held in **holding 2** as follows:

> "Another test would be whether the order if granted would

raise any triable issue between the plaintiff and the party sought to be joined. If not, the only proper order to make was to refuse the joinder where the application was by the defendant under Order 16 r 11."

Applying the test to the case, the learned trial judge held that since the Plaintiff was making no claim against the party to be joined, any order made in favour of the Plaintiff on his writ would not affect the legal rights of the party.

Now, falling under the wider view are cases like:

(i) ***Ussher v Darko (1977) 1GLR 476 C/A*** and

(ii) ***Coleman v Shang (1959) GLR 389*** .

In ***Ussher v Darko (supra)***, the Court of Appeal per Apaloo JA (as he then was) stated that there were no such fixed rules for a joinder of a party. It held in **Holding 1**:

"The jurisdiction of a court to join a party to an action to avoid multiplicity of suits under Order 16 r 11 might be exercised at any stage of the proceeding, so long as anything remained to be done in the action ……..…
Whether the application should be acceded to or denied, was a matter for the exercise of the trial judge's discretion and save that such discretion must be exercised judicially and in a manner conformable with justice, no fixed rules existed as to when and how it should be exercised." **[emphasis underscored]**

In an article, **TEST FOR JOINDER UNDER ORDER 16 r 11**(under LN 140A) published in the **August 1972 Vol. IV No. 2 of the Review of Ghana Law** the learned author, E.D. Kom (now of blessed memory) postulated that the best approach to an application for joinder is to adopt the wider test laid down by Denning MR in ***Gurtner v Circuit (1968) 2 QB 587 C/A.*** The test as appearing at **p. 598 of the Law Report** read as follows:

> "When two parties are in dispute in an action at law, and the determination of that dispute will directly affect a third person in his legal rights or his pocket, in that he will be bound to foot the bill, then the court in its discretion may allow him to be added as a party on such terms as it thinks fit. By so doing, the court achieves the object of the rule. It enables all matters in dispute to 'be effectually and completely determined and adjudicated upon' between all those directly concerned in the outcome."

The learned author expressed the view that if that English authority had been cited to Taylor J. when dealing with the application in ***Bonsu v Bonsu (supra)*** His Lordship would not probably have adopted the "Devlin test" as laid down by Devlin J in ***Amon v Raphel Tuck & Sons Ltd (1956) 1 All ER 273 @ 290*** which test has then been disapproved as being too narrow a construction of the rule.

From the above discourse, it is plain that whereas the wider school of thought advocates that the court has the unfettered discretion in the matter and that the judge's discretion ought to be exercised in a manner which conforms to justice and not to pay obeisance to any fixed rule of thumb, the narrow school of thought, on the other hand,

postulates that there should be a demonstration that the order for the joinder if granted should raise issues to be tried between the applicant and the party sought to be joined.

Another test that may also engage the attention of a judge when considering an application for joinder is whether the rights and liabilities of the proposed joinder are the same as the defendant if the party is being joined as the second defendant or another defendant. Similarly, if the party is being joined as another and/or 2nd plaintiff, the question should be addressed as to whether his rights and liabilities are the same as the Plaintiff. As a general rule, therefore, for 2 or more persons to join together as Co-plaintiffs or Co-defendants in a law suit as the case may be, they generally must share similar rights or liabilities.

At common law, a person may not be added as a Plaintiff unless that person, jointly with the other Plaintiff(s) was entitled to the whole recovery of their claim. In the same way, a person may not be added as a defendant unless jointly with the other defendant(s), he is liable for the entire demand.

So, broadly speaking, these principles generally govern the grant or refusal of an application for joinder or serves as a guide to the court in the exercise of its judicial discretion to either or refuse the application.

We do not intend to propound any new theory, neither do we want to tie ourselves to any hard and fast rule or to pay obeisance to either the narrow or the broader test. Therefore, in tackling the problem in this instant appeal and to do substantial justice in the matter, we shall approach it by asking the questions posed here below, that may assist us in determining that fundamental issue as to whether the presence of the party sought to be joined in this matter is indispensable or not. And we ask:

i. Would the joinder if granted, raise any triable issue(s) between

the appellant and Glico Group Ltd sought to be joined?

and or

ii. Would the court be seised with jurisdiction to order the proposed joinder ie Glico Group Ltd to satisfy any judgment that that may be recovered by the plaintiff in the final analysis?

It is right statement of law to hold that a person may either qualify or not, to be a party in a legal proceedings. The overriding factor is whether that party joined either at the initiation of the suit or subsequently, has any personal interest in the outcome of the case. In other words, whether his interest either in cash or in kind may be affected by the outcome of the case.

To determine whether a party is an indispensable party, the court is enjoined law and rule of practice to critically examine and consider the facts of the case, the relief(s) sought, the nature of counterclaim, if any, and the extent of the absent party's interest in the controversy raised in the lawsuit. A person who has no material interest in the subject matter of the litigation or in the relief demanded is not a proper party and may not be part of the legal action. The effect is that the case can proceed to a trial without him. However, where his presence is compulsory or indispensable, the court cannot proceed to try the case without him unless an order has been duly made to join him in the suit.

It bears emphasis, therefore, that by the true and proper interpretation of **Order 4 r 5(2) of CI 47,** an application for joinder should be granted where the presence of the party sought to be joined would ensure that all matters incidental to the proceedings were effectively and completely determined. The policy rationale is to avoid multiplicity of suits. However, where the presence of the person sought to be joined would not assist the court to completely and effectually adjudicate the issues in controversy, the application ought to be refused or dismissed.

Now, having regard to the pleadings the parties in this case filed, the affidavit evidence as well as the written submissions of both Counsel in this appeal, we hold the respectful opinion that doubtless, there is joinder of issues between the appellant and GLICO GROUP LTD. It goes without saying, therefore, that the court's judicial discretion shall be properly exercised if it was joined in the matter as the 2nd defendant. Put differently, upon a very careful consideration of the application and the pleadings filed and arguments of Counsel, we roundly endorse the position that there are triable issues between the appellant and GLICO GROUP LTD, the party sought to be joined.

Additionally, we think that in the event that the appellant proved his case as against the respondent and Glico Group Ltd, after full trial the trial court has the power to order the joinder to satisfy any judgment that may be recovered against it. We shall demonstrate it in a moment why we hold such views.

It is material to recognize that per the amended writ of summons, the appellant seeks among other judicial reliefs, a declaration that any sale/disposal and/or transfer of the nine (9) Golden Dragon branded buses to any other person and/or entity is null and void; order for recovery of monies spent on the buses by way of insurance, maintenance undertaken on the buses, etc; damages for breach of contract. The respondent, on the

other hand, has made a material denial of the claims of the appellant and has also counterclaimed against the appellant for recovery of sums of money claimed to be outstanding. The respondent did also claim damages for breach of contract against the appellant.

Ironically, the pleadings of the respondent never mentioned the fact that the buses belonged to Glico Group Ltd. That material fact was rather averred to for the first time in the affidavit in opposition for the order of joinder. That appears on ***pp 99-101 [roa] particularly @ 100***. The relevant portion of the affidavit contained in paragraph 14 is reproduced here below:

> *"14. That the buses the subject matter of the transaction between the defendant and the plaintiff were imported by Glico Group Ltd and same were registered in the name of Glico Group Ltd as the legal owners……*
>
> **[emphasis supplied]**

If indeed it is the case that Glico Group Ltd are the legal owners of the disputed buses and by reason of being legal owners had sold off the buses to 3rd parties and transferred title to the said 3rd parties, that alone makes Glico Group Ltd a necessary party. That shall then create an opportunity for the plaint of the appellant to be answered as to why such a material fact was not disclosed at the time of the negotiation between the appellants and the respondent and the conclusion and execution of the sale/purchase agreements. The nagging question as to why Obak Automobiles failed or refused to make such a material disclosure at the contract stage until the application to join Glico Group Ltd before such a material fact emerged has not been explained with any degree

of certainty to the satisfaction of the court. And that makes it more compelling for the learned trial judge to have granted the application for joinder and to have probed it further in the course of the full trial.

In the result, we disagree with the submissions of learned Counsel for the respondent that Glico Group Ltd has no business in the substantive suit before the lower court and therefore, an unnecessary party. As stated supra, Glico Group Ltd is a necessary party. Thus, the case ***Soonboon Seo v Gateway Worship Centre [2009] SCGLR 278 @ 291*** Counsel relied on is distinguishable from the instant case and a poor guide.

The other nagging question that should have weighed on the mind of the lower court was, if indeed the title to the buses was vested in Glico Group Ltd whether it can grant the counterclaim by the respondent. In other words, if indeed title to the buses rested with Glico Group Ltd then it is reasonable to hold that it was that entity that ought to file a counterclaim, if any, against the appellant. And that could only happen if Glico Group Ltd were joined in the case as the 2nd defendant.

It is trite learning that the general purpose of a joinder of a party to a suit is to avoid multiplicity of suits. Having regard to the pleadings and the affidavit evidence in the instant suit it was plainly obvious that Glico Group Ltd was a necessary party and it should have occurred to the learned trial judge that refusal of the application would unavoidably result in multiplicity of suits. In that regard, we round agree that the lower court grievously erred in law when it refused to grant the application to join Glico Group Ltd as the 2nd defendant in the matter.

In coming to this conclusion, we find as a useful guide, the dictum of Ampiah JSC in ***Sam (No. 1) v Attorney-General [2000] SCGLR 102*** in which case he is credited with that statement of law that runs as follows:

"Generally speaking, the court will make all such changes in respect of parties as may be necessary to enable adjudication to be made concerning all matters in dispute. In other words, the court may add all persons whose presence before the court is necessary in order to enable it effectually and completely to adjudicate upon and settle all the questions involved in the cause or matter before it. The purpose of joinder, therefore, is to enable all matters in controversy to be completely and effectually determined once and for all. But this would depend upon the issue before the court, ie the nature of the claim."

It is important to stress that the dictum of Ampiah JSC supra was quoted with approval by the Supreme Court in ***Nii Ago Sai v Nii Kpobi Tettey Tsuru III [2010] SCGLR 762***.

In re-echoing the position of the law, Abban J (as he then was) held in ***Aegis Shipping Co. Ltd v Volta Lines [1973] 1 GLR 438*** as per holding (2) as follows:

"…no matter the kind of construction which is put on Order 16, r 11, whether wider or narrower, the court had absolute discretion in any given case to determine whether having regard to the state of the pleadings and the issues raised, the intervener was a person who ought to have been joined or he was a person whose presence would enable the court, effectually and completely to decide the issues between the parties in the cause or matter. Even when it was shown that the intervener was a necessary party within the rule, the court could still refuse to join him if the action as then constituted could be well and properly contested by the parties."

It is worthy of note that old rule, Order 16, r 11 of LN 140A is now Order 4 r 5 of CI 47.

In conclusion, we need to emphasize that CI 47, Order 4 r 5(2) (b) gives the judge judicial discretion in any given case to join any person whose presence before the court

is necessary in order to enable the court to dispose of effectually and completely, all matters in controversy in the matter.

Following the reasons advanced supra, in answering the questions posed supra, we hold that there are triable issue(s) joined between the appellant and Glico Group Ltd particularly, whether Glico Group Ltd not a party to the sale/purchase contract entered between the parties herein could still seize the buses and sell same to 3rd parties.

Additionally, we think that in the event that Glico Group Ltd was joined to the suit as the 2nd defendant and the appellant is able to prove his case against the respondent and the party joined, the trial court shall be vested with the power to make all necessary orders in execution or enforcement of judgment that the appellant may recover against them. In the circumstances, Glico Group Ltd is a compulsory joinder. Glico Group Ltd has material interest in the subject of the litigation and the outcome of the case. The effect is that the case cannot proceed to a trial without Glico Group Ltd unless an order has been duly made to join it in the suit.

Consequently, the appeal is allowed. The ruling of the lower court refusing the joinder is hereby set aside.

This court exercising its powers under **rule 32(1) of the Court of Appeal Rules, CI 19** grants the application for the order of joinder, joining GLICO GROUP LTD to the suit as the 2nd defendant. By this order, the plaintiff is ordered to take steps to amend the title of the case to reflect the joinder. The appellant shall then cause the amended writ of summons together with its accompanying statement of claim to be served on the Glico Group Ltd within one (1) month from today and for the case to take its normal cause in the court below.

To ensure that substantial justice was done in the matter, we recommend to the Chief Justice to transfer the case and put it before another judge.

Costs to the appellant assessed at Ghc5,000.00

SGD

P. BRIGHT MENSAH

(JUSTICE OF APPEAL)

SGD

I agree **MARGARET WELBOURNE**

(JUSTICE OF APPEAL)

SGD

I also agree **JANAPARE BARTELS-KODWO**

(JUSTICE OF APPEAL)

COUNSEL

MATTHEW APPIAH FOR APPELLANT

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