

**IN THE CIRCUIT COURT “A” TEMA, HELD ON MONDAY, THE 11TH
DAY OF DECEMBER, 2023, BEFORE HER HONOUR AGNES OPOKU-
BARNIEH, CIRCUIT COURT JUDGE**

SUIT NO. C11/08/18

AMOS ADOMSON ---- **1ST PLAINTIFF/APPLICANT**

GASPER ADOM ---- **2ND PLAINTIFF/APPLICANT**

VRS.

NII MENSAH ---- **1ST DEFENDANT/RESPONDENT**

NII ANANG ADZOR ---- **2ND DEFENDANT/RESPONDENT**

COMFORT MENSAH ---- **3RD DEFENDANT/RESPONDENT**

2ND PLAINTIFF PRESENT, REPRESENTING 1ST PLAINTIFF

DEFENDANTS --- **ABSENT**

GAD MORTEY, ESQ. FOR THE APPLICANTS --- **PRESENT**

**SOLOMON KOFI ADDO, ESQ. WITH RICHARD CLARKE, ESQ. HOLDING
THE BRIEF OF RICHARD AKPOKAVIE, ESQ. FOR THE RESPONDENTS**
---- **PRESENT**

RULING ON AMENDMENT

This is a ruling on a Motion on Notice for leave to amend reliefs endorsed on the writ of summons and paragraph 2 of the statement of claim filed by the plaintiffs/applicants (hereinafter called “the applicants”) on 23rd October, 2023. The application was fiercely resisted by Counsel for the defendants/respondents (hereinafter called “the respondents”) who filed an affidavit in opposition on 21st November, 2023.

The applicants, in the affidavit in support deposed that they commenced the instant suit without legal advice and subsequently engaged the services of a lawyer to

prosecute the case. The applicants further state that although they gave a description of the land, the subject matter in dispute, they have been advised that there are further descriptions that they could include in order to avoid any possible ambiguity which as lay persons, they did not know. Also, they ought to state in very detail specifically the reliefs they are seeking from the Court rather than stating the reliefs in general terms in order to avoid multiplicity of suit. Thus, there is the need to amend the writ of summons and the statement of claim to couch the reliefs more accurately and describe the subject matter of the suit specifically.

The applicants attached a copy of the proposed amendments as **Exhibit “A”** and maintain that the amendments proposed do not affect the pleadings or any material facts which may warrant a response from the defendants and the amendments will not entail any costs nor cause any delays in the case. The applicants further state that the amendments are necessary so that all matters will be completely and effectually put before the Court to avoid multiplicity of suit.

The respondents fiercely resisted the application and in the affidavit in opposition stated that the respondents on the 9th day of August, 2023 closed their defence in this matter. Thus, the grant of the application to amend the reliefs endorsed on the writ of summons will deny the defendants the opportunity to set up their defence and provide a response in their respective statements of defence and counterclaim. The respondents further contend that evidence has been led on the claims of the applicants and the effect of the amendment will be to change the nature of the case. In addition, the said amendment affects exhibits tendered in evidence and cross examined upon and changes to the said pleadings relating to the proposed amendment will lead to undue delays.

Also, an amendment at this stage of the trial will further lead to undue hardship on the respondents with an injunction order in place. Again, changing the description of the land is material to the case. The respondents further deposed that since the inception of this suit, the applicants with and without counsel have been afforded the opportunity to amend their pleadings and have had the opportunity to set their claims properly before this Honourable Court and that an amendment of pleadings at this stage of the proceedings will cause undue delay and injustice. The respondents therefore pray the court to dismiss the application for leave to amend the pleadings.

RULING

The applicants did not indicate the rule under which the application was mounted but from the substance of the application, it is obvious that the application is brought under **Order 16 rule 5** of the High Court (Civil Procedure) Rules, 2004, C.I. 47. The said rule provides that the court may grant leave to any party to amend his pleading at any stage of the proceedings upon an application and on such terms as to cost or otherwise as may be just and in such manner as it may direct. Thus, it is within the discretion of the Court whether to grant or refuse an application for leave for any party to amend his pleadings at any stage of the proceedings before judgment is entered. However, the court is enjoined to exercise the discretion judiciously. In the case of **Adjetey vs Sowa** (1966) GLR 754, the court held that, however negligent or careless a party might have been and however, late the proposed amendment, it ought to be granted, if it would cause no injustice to the other party or the other party could be compensated by costs or otherwise. In the locus classicus case of **Yeboah v Bofour** [1971] 2 GLR 199 CA, the Court held in its holdings 7 & 8 that an application for an amendment may be made as soon as the necessity arises. The court further stated that as a general rule the court will allow an amendment even up to the last moment provided that;

- (i) no surprise results,
- (ii) it does not enable a party to set up an entirely new case or to change completely the nature of his case,
- (iii) it is not sought to add new parties;
- (iv) it will not do injury to the opponent's case or prejudice him in some way or otherwise,
- (v) the application be made bona fide and
- (vi) the proposed amendment will not cause undue delay or is irrelevant or useless or would merely raise a technical point.

A court will not grant leave to amend the pleadings after final decree or entry of judgment. The court further emphasised that the grant or refusal of the amendment is entirely within the discretion of the trial judge.

In the instant case, the applicants contend that at the time they issued the writ of summons, they were not represented and thus could not specifically describe the land and some of the reliefs that they are claiming and that the amendment sought will not call for further evidence to be led in the matter and that no undue delay or injustice will be caused to the respondents should the application be granted. The respondents on their part contend that trial is concluded and the matter has been adjourned for addresses and thus, the grant of the application will deny them the opportunity to mount a defence to the case since no evidence will be led.

I have perused the application and the proposed amendment attached to it as **Exhibit "A"**. From the proposed amendments, the description of the land as *ASH/T/E-1* is contained in paragraph 2 of the reply and defence to counterclaim filed by the applicants on 3rd December, 2019, paragraph 2 of the witness statement of the 1st applicant filed on 5th April, 2019, and on **Exhibit "C1"**, the receipt of ground rent

issued by the Tema Development Corporation. It was also based on this description that the court, differently constituted subpoenaed the TDC Development Company Ltd. to testify in the case and to be cross-examined by the parties. To that extent, the court will grant the applicants leave to amend the endorsement on the writ of summons to describe the land as property *No. ASH/T/E-1*. The description of the land drawn to scale is also contained in the site plan already in evidence as **Exhibit “B1”**.

The applicants also included a relief for a declaration of title to Henry Abankwa Adomson being the grantee licensee and or lease interest by TDC Development Company Ltd, special and general damages for trespass. Also, the applicants seek to amend paragraph 2 of the statement of claim to state that their late father was granted a license or a lease by TDC in respect of the subject matter in dispute. In my view, allowing the amendment will amount to enabling the applicants to set up an entirely different case from the case originally put up since they described their late father as the lawful owner of the property in dispute. This will occasion injustice to the defendants who will not have the opportunity to set up a defence to same. The claim for general damages which was not originally claimed and the claim for special damages which requires that they be pleaded with particulars and strictly proved. I will therefore deny the application for leave to amend the writ of summons on that basis. The amendment to the amended writ of summons and statement of claim is granted and limited to the description of the land on the endorsement on the writ of summons and statement of claim as property *No. ASH/T/E-1* within TDC acquisition zone.

The application for leave to amend the endorsement on the amended writ of summons to particularly describe the land is accordingly granted. The applicants shall amend the endorsement on the writ of summons and statement of claim as per the site plan tendered in evidence and serve same within 7 days on Counsel for the respondents. No order as to costs.

SGD.

**H/H AGNES OPOKU-BARNIEH
(CIRCUIT COURT JUDGE)**