

**IN THE CIRCUIT COURT OF JUSTICE, SITTING AT ASHAIMAN ON
WEDNESDAY THE 16TH DAY OF NOVEMBER , 2022. BEFORE HIS
HONOUR SIMON GAGA**

SUIT NO: C2/06/22

- 1. VENATIUS AMANYO PLAINTIFFS/APPLICANTS**
OF COMMUNITY 24 HILLS,
TEMA
- 2. NETAS PROPERTIES & INVEST. LTD**
OSU, BEHIND PHOTO CLUB

VRS

- 1. JONATHAN TETTEH DEFENDANTS/RESPONDENTS**
ODUMASE – DODOWA
- 2. ELVIS NARH**
OF DODOWA

RULING ON MOTION ON NOTICE TO AMEND STATEMENT OF CLAIM

Before this Court is an Application filed on 25th day of May, 2022 by the Plaintiffs/applicants for an Order of Amendment of the Statement of Claim of paragraphs 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14 and 15 and substitute same with paragraphs 1 to 18 of a proposed Amended Statement of Claim which is marked as Exhibit 'A'.

However, the Applicants, on 19th day of September, 2022, filed a Supplementary Affidavit in support to amend the whole Statement of Claim and substitute it with another one. Counsel attached a proposed Amended Statement of Claim and same is marked as Exhibit 'A'.

THE CASE OF THE APPLICANTS

The gist of the Applicant's case is stemmed from the Motion on Notice and the affidavit in support together with the supplementary affidavit.

According to the Applicant, he instituted an action against the Defendants/Respondents for a Declaration of Title to all that piece of land situate and lying at Odumase Dodowa in the Dangbe West District of which the Defendants have trespassed on same.

He deposed that after initiating the suit he realized that there were some material facts that have not been pleaded. He therefore prayed for an Order to enable him to amend the pleadings so that all the issues in controversy would be effectively and completely determined.

It is to be noted that the Respondents did not file any affidavit in opposition. The Court ordered the Applicant to move the application.

SUBMISSION BY COUNSEL FOR PLAINTIFFS/APPLICANTS

Counsel repeated all the depositions of the affidavits in support. Counsel referred the Court to Order 16 of CI 47, which permits amendments to be made at every point of the proceedings of a suit even on appeal.

APPLICABLE LAW

I believe that the application is grounded on Order 16 of CI 47, which provides in substance that at any stage before judgments are signed or entered, the Court has power to order any Writ, Title or pleadings of a suit to be amended. The amendment may be ordered at the instance of the Court or at the instance of any of the parties. The underlining consideration for refusing or granting any amendment is to enable the Court to determine the real question in controversy between the parties. See *(1) Justice S. A. Brobbey's Book, Trial Courts and Tribunals of Ghana, 2nd Edition @ page 297.*

The power of the Court to allow parties to amend is discretionary, but must be exercised judicially. The general test is whether or not the amendment will

promote the course of justice as between the parties and is necessary for the purpose of determining the material issues in dispute. See *Practical Guide to Civil Procedure In Ghana by Justice Marfo-Sau*.

It is worthy of note that since the Respondent did not file any affidavit in opposition, there is no need for the Court to comment on same.

I have carefully studied the submission by Counsel and I have realized that the real issue in contention is the disputed land. As Brobbey, JSC, indicted in his book, *Courts and Tribunals of Ghana*, the underlying consideration for refusing or granting any amendment is to enable the Court to determine the real question in controversy between the parties. I am tempted to believe that the amendment of the pleadings is meant to promote the course of justice between the parties and is also necessary for the purpose of determining the material issue in dispute.

I therefore grant the application. I award cost of GH¢1,000.00 against the Plaintiffs/Applicants.

(SGD) (H/H) SIMON GAGA
(CIRCUIT COURT JUDGE)

1. COUNSEL FOR PLAINTIFFS/APPLICANTS
DORA OCQUAYE NORTEY
2. COUNSEL FOR DEFENDANTS/RESPONDENTS
M. DODOO FOR MAXWELL MENSAH.

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