

**IN THE CIRCUIT COURT '10' OF GHANA, ACCRA, HELD THIS FRIDAY  
10<sup>TH</sup> DAY OF MARCH, 2023 BEFORE HER HONOUR EVELYN E. ASAMOAH  
(MRS).**

**SUIT NO. C1/16/2022**

**HECTOR HAMMOND**

**V.**

**FELIX KOJO FOLI**

*MR. EDEM NUHOHO & MRS. NAA KOSHIE MILLS HOLDING MR. ASSAD  
GBADEGBE'S BRIEF FOR PLAINTIFF  
MR. EDMUND OPPONG NANA EFFAH FOR THE DEFENDANT*

---

---

**RULING**

●The defendant/applicant on 14<sup>th</sup> February, 2023, filed an application to set aside the interlocutory judgment in default of appearance and final judgment and for leave to enter appearance and file defence.

The applicant admitted in paragraph 4 of his affidavit in support of the motion that he was served with the writ of summons and statement of claim but he could not enter appearance because the lawyer he instructed to represent him failed to do so.

The applicant contended that in a declaration for title, both parties must be heard and that he was neither served with the witness statement nor a hearing notice to notify him about the status of the case. According to him, the jurisdiction of the court was not properly invoked. That the non-service of the hearing notice before the plaintiff was allowed to prove his case constitutes a violation and breach of

the rules of the natural justice. He added that he has a reasonable defence to the suit.

- The writ of summons and statement of claim were filed on 11<sup>th</sup> November, 2021 and personally served on the defence on 22<sup>nd</sup> November, 2021 at 8.30 am. The defendant did not enter appearance, neither did he appear in this court. The court, in accordance with order 10 of the High Court Civil Procedure Rules C147-2004, granted an application for interlocutory judgment in default of appearance. The plaintiff filed his witness statement on 11<sup>th</sup> May, 2022 and on 15<sup>th</sup> January, 2023, the court entered judgment for the plaintiff, after the plaintiff had adduced evidence to prove his case.

- The plaintiff/respondent in his affidavit in opposition to the defendant's application, stated that an application for judgment in default of appearance is filed ex-parte and it's therefore untenable for the defendant to claim that he was not served with the motion ex-parte for judgment in default of appearance. That having obtained final judgment in this matter, there is no interlocutory judgment to be set aside by this court. That the defendant having failed to appear before this court in total disregard and disrespect to the court, there is no requirement under the rules that he should continuously be served with processes. The tardiness and negligence of the defendant in prosecuting his case cannot be a reason to set aside the final judgment in this matter.

- The question then is: whether the defendant, having failed to enter appearance must be served with Witness Statements and other processes.

- Order 10 rule 2 of C147 states:

*Where the plaintiff's claim against a defendant is for an unliquidated demand only, and the defendant fails to file*

*appearance, the court may, after the time limited for appearance, apply to enter interlocutory judgment against that defendant's for damages and proceed with the action against the other defendant's, if any.*

Order 10(4) (1):

*Where the plaintiff's claim against a defendant is for possession of immovable property only and the defendant fails to file appearance, the plaintiff may, after the time limited for appearance, apply for judgment for possession of the immovable property and costs as against the defendant; provided that the plaintiff may proceed with the action against other defendants, if any, who have filed appearance.*

- Mr. S. Kwame Tetteh in his book: Civil Procedure – A Practical Approach Page 326 – stated the essence of timelines and default judgments:

*“... The rationale for a default judgment is that the process of adjudication would not be efficient unless the time table set out in the Rules for the conduct of litigation is followed strictly by litigants. A defendant who defaults in entering appearance is thus deemed to admit the claim endorsed in the writ and the court would enter judgment for the plaintiff where the Rules so permit ...”*

Page 339, the Author stated:

*“ In an application for judgment in default of appearance, the plaintiff must, satisfy the court, not only that the defendant has defaulted in entering appearance to the action but also that the*

*defendant had been duly served with the Writ of Summons. The requirement of service is essential for fulfilment of the audi alteram partem rule.”*

- In this case, the affidavit of service and the official search show that the defendant was duly served with the writ. Counsel for the defendant/applicant argued that failure to serve the witness statement and Hearing Notice on the defendant render the judgment void. Counsel referred to the case of **Attoh-Quarshie V Okpote (1973) IGLR 59**. The court in that case held – where proceedings are taken by a plaintiff in the absence of the defendant, it is important that there should be at every stage a strict compliance with the rules and therefore it is reasonable and proper thing in the case of proceedings by default to treat non-compliance with such a rule as ... not as a mere irregularity which can be waived ...”
- Counsel for the Respondent explained that there was no requirement under the rules that the plaintiff should continue serving the defendant who failed to enter appearance with processes. He referred to the case of **Nii Odai Ajiku IV V. The A-G and Wor-Nii Borketey Laweh XIV Supreme Court – JELR 68505 (2010)** – where Justice Owusu JSC (as she then was) stated:

*“With all due respect to counsel, it is not procedurally impossible, indeed ridiculous for the plaintiff to proceed as if such a party had appeared. The plaintiff cannot file a reply when no appearance has been entered and for that matter, a defence filed. Neither can summons for direction be taken when no issues are joined. All that “proceed as if such a party had appeared” means is that the case is set down for hearing. The plaintiff must lead evidence in proof of his claim. Where a plaintiff claims a*

*declaration of title, he still has to lead evidence in proof of his title notwithstanding failure on the part of the defendant to enter appearance."*

- Reference was made to Justice S. A. Brobbey book: Practice and Procedure in the Trial Court and Tribunals of Ghana, 2<sup>nd</sup> Edition page 280 paragraph 638.

*"A party who fails to appear in court after due service on him is taken to have deliberately failed to take advantage of the opportunity to be heard. The audi alteram partem rule cannot be said to have been breached in such a situation."*

- In this case, the court complied with all the rules of the court. The defendant failed to take advantage of the opportunity to be heard; did not enter appearance. There is no legal requirement that having failed to enter appearance, he should be served with Witness Statements and other process.

In the case of **Haruna V Arts Council of Ghana (1992) 2GLR1**.

The court held:

*"A default judgment would be set aside if an affidavit filed on the merit disclosed a reasonable defence to the claim and explained satisfactorily the cause of the delay..."*

The only reason given by the applicant is that his lawyer failed to enter appearance on his behalf, without more. Counsel for the respondent, rightly pointed out that defendant failed to establish that he was diligent or "tried to find out the progress of the case". The defendant did not provide any proof to show that he has reasonable defence to the claim/that the land belongs to him.

Application dismissed. Cost of GH¢2,000.00.

**(SGD)**

**H/H EVELYN E. ASAMOAH (MRS.)  
CIRCUIT COURT JUDGE**