

IN THE CIRCUIT COURT OF GHANA HELD IN ACCRA AT CIRCUIT COURT '2' ON FRIDAY, 11TH AUGUST, 2023 BEFORE HIS HONOUR ISAAC ADDO

SUIT NO. C11/103/2023

LYDIA MAHAMA aka MRS LYDIA AKAZARA

Suing Per Her Lawful Attorney

SABRINA ALOU YAO

PLAINTIFF/RESPONDENT

VRS

RAPHAEL AKAZARA

DEFENDANT/APPLICANT

PLAINTIFF'S ATTORNEY PRESENT

DEFENDANT PRESENT

NATHAN TSOMETSRI, ESQ. FOR THE DEFENDANT/APPLICANT PRESENT

BOB SENYALAH, ESQ. FOR THE PLAINTIFF/RESPONDENT PRESENT

RULING ON MOTION ON NOTICE FOR SECURITY FOR COSTS (ORDER 24 RULE 1(1)(a)(b) of CI 47)

The Plaintiff (hereinafter called the Respondent) commenced this action through an Attorney by a Writ of Summons issued at the Registry of this Court on the 16th May, 2023 seeking the following reliefs:

- (1) An Order of the Court setting aside the Order dissolving the marriage between the parties based on the fraudulent processes filed from the Notice of the Petition, the Petition and Order for Service out of jurisdiction.
- (2) An Order of the Court cancelling or revoking the Divorce Certificate dated 24th March, 2011.
- (3) An Order directing the Defendant to assume immediate responsibility of providing for the child of the parties' marriage as follows:

- (i) Paying Mya Avala Akazara's school fees until she completes her education in London where she was born and has been having her education.
- (ii) Providing Mya Avala Akazara's medical care.
- (iii) Providing for Mya Avala Akazara's upkeep.
- (iv) Damages for fraud.
- (v) General damages.
- (vi) Costs, including Plaintiff's legal fees.

The Defendant (hereinafter called the Applicant) entered Conditional Appearance on the 1st June, 2023 but later filed Statement of Defence on the 15th June, 2023.

This instant ruling is in respect of a Motion on Notice for Security for Costs. The gravamen of the Applicant's application is catalogued at paragraphs 5-7 of the Affidavit in Support of the motion as follows:

"5. That the address of the Respondent shows that she is ordinarily resident outside Ghana.

6. That I have been advised and believe same to be true that there is reason to believe that both the Respondent and her Lawful Attorney will not be able to pay the costs of the Applicant herein if ordered to do so by the Honourable Court.

7. That in view of the above, there is a genuine risk that the Respondent would be unable to satisfy any Order in respect to costs made in favour of the Applicant and accordingly, Respondent ought to be required to post security for costs in an amount to be determined by this Honourable Court, prior to being permitted to take any steps in this proceeding."

The Respondent vehemently opposed to the application and relied on all the depositions contained in the Affidavit in Opposition to the motion especially paragraphs 5 to 12. For the avoidance of doubt, I reproduce them below:

“5. That the said Motion is uncalled for as the circumstances of this suit do not necessitate the provision of security for costs.

6. That I have been advised and I verily believe same to be true that the whole application and the averments in the Affidavit in Support demonstrate a serious misconception of the provision of Order 24 Rule 1 (a) & (b) of CI 47 of 2004.

7. That paragraph 5 is admitted. The Plaintiff/Respondent is not only ordinarily resident outside Ghana but resides in the same matrimonial home of the parties which Defendant/Applicant and Plaintiff/Respondent used to live in the United Kingdom before the Defendant unceremonious relocation to Ghana.

8. That the Plaintiff repeats paragraph 7 above and states that she is therefore not a Plaintiff whose address abroad or residence outside Ghana is unknown and which, in the unlike event of costs awarded in favour of the Defendant, he would have to search for Plaintiff's whereabouts for enforcement.

9. That more importantly, I have been advised and I verily believe same to be true that it is for the Court to consider all the circumstances of the case, in deciding whether or not to order the provision of security for cost and this is not a case for the grant of security for costs may be necessary.

10. That by reference to Rule 1 (1) (b) of Order 24 of CI 47 in making his Application, the Defendant is saying the Plaintiff is a ‘nominal Plaintiff’ which I have been advised, and I verily believe to be true, is a misapprehension of ‘nominal Plaintiff’.

11. *That I have been advised and I verily believe same to be true that according to Rule 1 (1) (b) of Order 24 of CI 47, a basis of the Applicant's application, 'a nominal Plaintiff' is one who sues 'for the benefit of some other person' but in the instant suit, the Plaintiff is not suing for the benefit of any other person than herself. Thus Plaintiff cannot be treated as a 'nominal Plaintiff' under the rules for purposes of security for costs.*

12. *That in answer to paragraph 6 of the Affidavit in Support, the Plaintiff states that she is a responsible person/parent. Plaintiff from 2010 solely took care of the upbringing needs and education of the child of the parties up to this day and continues to do so. Payment of any costs if ordered by the Court cannot be something she cannot afford."*

This application is grounded on Order 24 Rule1(1)(a) & (b) of the High Court (Civil Procedure) Rules, 2004 (CI 47) and it reads:

1. (1) Where, on the application of a defendant, it appears to the Court that

(a) the plaintiff is ordinarily resident outside Ghana;

(b) the plaintiff, not being a plaintiff who is suing in a representative capacity, is a nominal plaintiff who is suing for the benefit of some other person and that there is reason to believe that the plaintiff will not be able to pay the costs of the defendant if ordered to do so.

On application of a defendant, the Court may, having regard to all the circumstances of the case, order the plaintiff to give such security for the defendant's costs of the proceedings as may be just. The power is discretionary but imposes a duty on the Court to consider all the circumstances in order to determine whether to make the order and how much to order. The Court is however enjoined not to enter into the merits of the action. In the case of Gatco Chempharam v Pharmadex (Gh) Ltd [1999-2000] 2 GLR 262, CA, the court held that:

“..... the Court cannot, upon an application for security to costs to be given by a plaintiff, go into the merits of the action. It appears to me that it would be highly inconvenient to do so, and as the reason for giving security for costs is not dependent on the merits of the action should be looked into at all.”

The amount of the security must be such sum as was just, having regard to all the circumstances of the case but not on a full indemnity basis. The amount must relate to the estimated time of the proceeding, nature of documents filed, court charges, witnesses to be called, the complexity of the case and the lawyer’s costs.

Under the Rules, the Court may order the Plaintiff to provide security for costs. The sole concern in a proceeding for security for costs is the costs of proceedings and not the judgment debt that may be awarded.

In this case, it is not disputed that the Plaintiff is ordinarily resident in the United Kingdom and suing through her Lawful Attorney. Although residence abroad is a condition precedent to an order for security for costs, residence alone is not decisive. This point was made succinctly by Whitford J in *C’ie Française de Télévision v Thorn Consumer Electronics Ltd* [1981] FSR 306 at 307 that:

“..... everything depends upon the circumstances of each case, and it does not necessarily follow that because one is faced with a foreign based plaintiff, an order for security will be made”

However, the question to determine is whether or not the Plaintiff is a nominal Plaintiff. According to the Black’s Law Dictionary, a nominal party is a plaintiff or a defendant included in a lawsuit because of a technical connection with the matter in dispute, and necessary for the court to decide all issues and make proper judgment, but with no responsibility, no fault and no right to recovery. It can also be said that a nominal party is thus a plaintiff or defendant who has no

real interest in the result of the suit, or no actual interest or control over the subject matter of the litigation, but is solely joined because a technical rule of practice requires his/her presence in the matter. A nominal plaintiff, thus is a person who is a plaintiff in name but who in truth sues for the benefit of another person. In the case of Amalgamated Press Ltd v Independent Press Ltd and Anor [1960] GLR 113, the Court held with approval of Cowell v Taylor (1885) 31 Ch. D, 34 to the effect that the plaintiff company is a nominal plaintiff in the legal sense, for example an insolvent suing for the benefit of another person, the court could order him to give security for costs. Insolvency or poverty of a plaintiff is not by itself a ground for requiring him to give security for cost.

In this instant case, on the face of the Writ of Summons and without going into the merits of the case, it is the Plaintiff who is suing through a lawful attorney and not for the benefit of any other person but the Plaintiff himself. The Plaintiff cannot therefore be said to be a nominal Plaintiff. In the circumstances, I dismiss this application as misconceived. I award cost of GH¢2,000.00 against the Defendant/Applicant.

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ISAAC ADDO
CIRCUIT JUDGE
11TH AUGUST,
2023

