

IN THE CIRCUIT COURT OF GHANA HELD IN ACCRA AT CIRCUIT COURT '2' ON THURSDAY, 15TH JUNE, 2023 BEFORE HIS HONOUR ISAAC ADDO

SUIT _____ NO.

C1/12/2014

**CLEMENT BORTEY
PLAINTIFF/APPLICANT**

VRS

- 1. ANNE (QUARZZY'S MART)**
 - 2. MODY'S TREASURE LAND**
 - 3. JOY-LYS PUB & GRILL**
 - 4. JOSIAH ARYEH**
 - 5. LES PASSIONNESS**
 - 6. J.B. LIMANN**
- DEFENDANT/RESPONDENT**

6TH

PLAINTIFF PRESENT

FELIX QUARTEY, ESQ. FOR THE PLAINTIFF/JUDGEMENT DEBTOR/APPLICANT ABSENT

NANA SAKYI-ADDO GYAMPOH, ESQ. WITH ABIGAIL APPIAH, ESQ. HOLDING THE BRIEF OF DANIEL SEGU OSEI, ESQ. FOR 6TH DEFENDANT/JUDGEMENT CREDITOR/RESPONDENT PRESENT

RULING ON MOTION ON NOTICE TO AMEND NOTICE OF APPEAL DATED 7TH SEPTEMBER, 2022 (ORDER 16 RULE 7 OF CI 47)

This Court differently constituted delivered judgement in this case on the 28th July, 2022 and dismissed the Plaintiff/Judgement Debtor/Applicant's (hereinafter referred to as the 'Applicant') claims and upheld the 6th Defendant/Judgement

Creditor/Respondent's (hereinafter referred to as the 'Respondent') claims. On the 14th April, 2023, this Court differently constituted dismissed an application by the Applicant Applicant for Stay of Execution Pending Determination of Appeal.

This instant ruling is in respect of a Motion on Notice for Leave to Amend the Notice of Appeal dated 7th September, 2022 filed by the Applicant.

The grounds upon which this instant application is premised are catalogued in the supporting affidavit accompanying the motion paper. The relevant parts are contained in paragraphs 6–10 of the affidavit in support. For the avoidance of doubt, I reproduce them below:

“6. That after judgement was awarded against the Applicant herein the Applicant filed a Notice of Appeal in the Registry of this court. Attached as Exhibit 1 is a copy of the Notice of Appeal

7. That the Exhibit 1 as filed contained some errors which ought to be rectified.

8. That we inadvertently maintained the name of the previous judge who was then handling the suit so the correct name of the judge of this Honourable Court needs to be inserted together with the date of the delivery of the judgement.

9. That the suit number was erroneously stated and ought to be corrected.

10. That attached Exhibit 2 is a copy of the proposed Amended Notice of Appeal.

The Applicant's counsel cited the case of Jibril Mahama vrs Akwasi Mensah Civil Appeal No. J4/45/2019 dated 4th November, 2020.

The Respondent vehemently opposed to the application and relied on all the depositions contained in the Affidavit in Opposition to the motion. The Respondent's counsel submitted that the original Notice of Appeal is riddled with incurable and/or omissions which renders the said Notice of Appeal null

and void. That, the Notice of Appeal has a wrong suit number, makes reference to a Judge who has not delivered any judgement in this suit and it does not refer to any date as the date on which the judgement sought to be appealed was delivered, thus, the Notice of Appeal dated 7th September, 2022 makes a very bare reference to an unidentifiable judgment which cannot form the basis of an appeal. That any amendment seeking to cure any defect on the face of the Notice of Appeal by granting competency to same ought to be brought within the time limited for filing such a Notice of Appeal. The computation of time from when the judgement was delivered, the amendment sought has been filed nine months after the delivery of the judgement which is well beyond the time limited by the rules of Court for lodging an appeal against a final judgement. The instant application is caught by the effluxion of time and thus this Court's jurisdiction is ousted as there is no proper Notice of Appeal pending.

This application is grounded on Order 16 rule 7 of the High Court (Civil Procedure) Rules, 2004 (CI 47) and it reads:

"For the purpose of determining the real questions in controversy between the parties or of correcting any defect or error in the proceedings, the Court may, at any stage of the proceedings either of its own motion or on application of any party, order any document in the proceedings to be amended on such terms as to costs or otherwise as may be just and in such manner as it may direct".

This Court therefore has a discretion pursuant to Order 16 rule 7 of C.I. 47 grant this application if it finds same just to do so. In other words, it is based on the duty to do justice. What is meant by the duty to do justice is ably stated by the distinguished Taylor J (as he then was) in the case of Bonsu & Another VS. Bonsu [1971] 1 GLR 242 where he held that the true legal notions of justice have been circumscribed by the demands of the law in that the court's administer justice

according to three and only three yardsticks: statute, case law and well-defined rules of practice.

I have carefully read the motion paper and the supporting affidavit as well as the affidavit in opposition and all the annexures. I have also listened to the submissions made by counsel for both sides and below are my reasons for arriving at the decision that follows.

The two cases cited by the Respondent's counsel are distinguishable from this instant case. In the unreported case of Republic vrs Okyere Darko: Ex Parte Lufus Owusu, Civil Appeal No. J4/48/2019 dated 3rd February, 2021, the Supreme Court distinguished review from appeal. In the Judgement of the Supreme Court, it stated:

"It is not for nothing that the rules of court procedure stipulate different procedural originating processes at the end of a determination of a matter, either you file a review or appeal. Where therefore an originating process like a review had been embarked upon in contra distinction to an appeal, then in the case of dissatisfaction with the determination therein, it is the procedure rules that are provided for in cases where the person is desirous of testing the said decision in an appellate court that must be complied with. This is the only way the integrity and sanctity of the rules of procedure can be legitimised and honoured by all stakeholders"

"Once the Respondent had applied for a review, the option of appealing against the substantive decision of 30th April, 2015 is foreclosed. That being the case, it means there was in fact no valid appeal pending before the Court of Appeal. "

The Court added that once the Notice of Appeal is invalid, null and void, then by operation of law, it means there was no valid appeal pending before the Court of Appeal for them to have made the decision they rendered.

On the other hand, in the unreported case of *Raoul Abou-Chedid vrs Gold Coast Securities Limited* Civil Appeal No. H3/190/2017 dated 14th February, 2017, the Defendant/Appellant/Applicant filed a motion at the Court of Appeal for leave to amend a notice of appeal, the Court of Appeal dismissed the application on grounds of jurisdiction and held that the appropriate forum for such application was the Supreme Court.

It is not in dispute that the Judgement was delivered on the 28th July, 2022 and the Notice of Appeal was lodged at the Registry of this Court on the 7th September, 2022 within the time allowed for filing same. Rule 9 of the Court of Appeal Rules, 1997 (CI 19) provides the time limits for appealing and it reads:

"(1) Subject to any other enactment for the time being in force, no appeal shall be brought after the expiration of-

(a) twenty-one days in the case of an appeal against an interlocutory decision; .or

(b) three months in the case of an appeal against a final decision unless the court below or the Court extends the time.

(2) The prescribed period within which an appeal may be brought shall be calculated from the date of the decision appealed against.

(3) An appeal is brought when the notice of appeal has been filed in the Registry of the court below." (Emphasis mine)

In this instant application, the Applicant is asking this Court to grant him leave to amend the Notice of Appeal lodged at the Registry of this Court because of some errors as deposed to in the Affidavit in Support of the motion supra. To the Respondent, this application should be dismissed.

If this application is granted, would it occasion any miscarriage of justice? In the case of *Mahama Hausa vrs Baako Hausa* [1972] 2 GLR 469, the Court of Appeal held

that an amendment should be allowed where it is necessary for determining the real questions in controversy between the parties. In this case, the Court of Appeal borrowed the words of Bowen L.J. in Cropper vrs Smith (1884) 26 Ch.D. 700 at pp. 710-711, C.A. in this case and said the words are apposite in this regard and I quote:

"[I]t is a well-established principle that the object of the Courts is to decide the rights of the parties, and not to punish them for mistakes they make in the conduct of their cases by deciding otherwise than in accordance with their rights I know of no error or mistake which, if not fraudulent or intended to over-reach, the Court ought not to correct, if it can be done without injustice to the other party. Courts do not exist for the sake of discipline, but for the sake of deciding matters in controversy, and I do not regard such amendment as a matter of favour or grace ... It seems to me that as soon as it appears that the way in which a party has framed his case will not lead to a decision of the real matter in controversy, it is as much a matter of right on his part to have it corrected, if it can be done without injustice, as anything else in the case is a matter of right."

In the humble view of this Court, this application merits the exercise of the discretionary powers of the Court. Rule 31 of CI 19 has given the Court of Appeal some general powers to effect amendments. Rule 31 of CI 19 reads:

"The Court may-

- (a) make any order necessary for determining the real question in controversy;**
- (b) amend any defect or error in the record of appeal;**
- (c) direct the court below to enquire into and certify its finding on any question which the Court considers fit to determine before final judgment;
- (d) make any interim order or grant any injunction which the court below is authorised to make or grant; and

(e) direct any necessary enquiries or accounts to be made or taken and shall generally have full jurisdiction over the whole proceedings as if the proceedings had been instituted and prosecuted in the Court as a court of first instance." (Emphasis mine)

It is also worthy to note that the Judgement, the subject matter of this application misquoted the Suit Number. Instead of C1/12/2014, it quoted C1/12/2013. Can one also argue that this Judgement does not exist? To this Court, this is a genuine mistake and can be likened to errors on the face of the Notice of Appeal.

In line with the above, I hereby grant the application for leave to amend the Notice of Appeal. Leave is hereby granted to the Applicant to amend the Notice of Appeal in conformity with the proposed Notice of Appeal attached to this application, save that the Suit Number should read C1/12/2014 instead of C1/12/2013. The Applicant has 10 days from today to file the Notice of Appeal.

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ISAAC ADDO
CIRCUIT JUDGE
15TH JUNE, 2023