

IN THE CIRCUIT COURT OF JUSTICE GREATER ACCRA REGION HELD
AT DANSOMAN ON WEDNESDAY THE 23RD DAY OF MAY, 2023 BEFORE
HER HONOUR HALIMAH EL-ALAWA ABDUL-BAASIT

SUIT NO.: CCD/C9/01/23

KWAKU PEPRAH ... PLAINTIFF/RESPONDENT

VS.

THE TENANTS ... DEFENDANTS/APPLICANTS

RULING:

**MOTION ON NOTICE FOR AN ORDER TO STRIKE OUT WRIT UNDER
ORDER 2 RULE 3(2) AND ORDER 9 RULE 8**

Background:

The Plaintiff on the 23rd of March 2023 issued a Writ at the Registry of this Court against the Defendants, described as Tenants; seeking for the following reliefs;

- i. An Order of eviction against the Defendants.
- ii. An Order of perpetual injunction restraining the Defendants, their assigns, privies or whomsoever from interfering with the property in dispute.
- iii. Costs including legal fees.
- iv. Any other reliefs as the court may deem fit.

On the 24th of March 2023, the Defendants filed a Notice of Entry of Conditional Appearance and on the 6th of April 2023, Counsel for the Defendants filed a

Motion on Notice for an Order to strike out the Writ of Summons. The Affidavit in Support of the Application, with Counsel for the Defendants being the Deponent, deposed among others that from the Writ, the Plaintiff claims he is suing tenants and no name was endorsed on the Writ to know the tenant he indeed intended to bring before this court of competent jurisdiction. He deposed further that it is trite that you cannot sue an unknown person and a Writ ought to be endorsed with the name of the Defendants, the occupational and residential address of the defendants but same was not done by the Plaintiff, neither was any of the requirements fulfilled except for the address provided. He continued that the tenants were put into occupation by Selina Opong, Esther Aboagye and Mina Aboagye-Boafo, who are aunts to the Plaintiff and the Plaintiff could have brought this action against his known aunties, especially when they were the persons that put the tenants into possession and were at the Police station to give their statements to the Police when a report was made by Plaintiff to the Dansoman Police. Counsel concluded by praying the court to set aside the Plaintiff's Writ of Summons because the same has not been served on any known person or Defendant in this suit.

In an Affidavit in Opposition deposed to by the Plaintiff herein, he stated among others that every single tenant occupying the building was sued in their capacities as occupants of the property, the subject matter of the instant suit. He deposed further that he has been informed that civil actions such as the instant one can be commenced against unknown persons including trespassers whose immediate identities may be unknown to a Plaintiff at the time of commencing the civil suit. Additionally, Plaintiff deposed that the the subject matter of the suit belongs to his deceased father of which documents obtained from the Lands Commission as well as Letters of Administration procured attest to same. He

concluded by deposing that the Defendants are proper parties to be sued in the instant action and prayed for the instant Application be dismissed with a heavy cost.

Issues for Determination

The Plaintiff herein commenced the action by issuing the Writ of Summons as required by law but described the Defendants as 'The Tenants', without providing the names nor indicating the number of the tenants although the address of the said tenants was provided. In view of this, the issues for determination are

- i. **Whether or not an action can be commenced by the Plaintiff without naming the Defendant(s) in the suit.**
- ii. **Whether the Writ of Summons can be struck out on the grounds that the Defendant(s) are unnamed in the Writ of Summons.**

Submissions of Counsel

Arguing the instant Motion, Counsel for the Defendants/Applicants (hereinafter referred to as 'Defendants') submitted, among others that, a Plaintiff ought to sue a known person and endorse the address of the known person on the Writ. He submitted further that it is only the Land Act, 2020 (Act 1036) that in land matters, a trespasser can be sued when the trespasser's name is unknown to the Plaintiff as at the time of issuing the Writ. Counsel further questioned who the tenants are and should the Plaintiff get judgment, whom does he intend to execute the judgment against? He concluded that the Plaintiff did state in his

Affidavit in Opposition that the property belongs to his father and not Selina Oppong's mother, implying that he knows whom he wants to sue, since the whole matter involves the ownership of the property.

Counsel for the Plaintiff/Respondent (hereinafter referred to as Plaintiff) vehemently opposed the Application on the following grounds:

1. That Counsel on the other side announced to the court that he is representing the Defendant, i.e., the tenants and that presupposes that the tenants are in existence and same are known to counsel.
2. Per Section 12(4) of the Lands Act, 2020 (Act 1036), the subject matter affects a land and therefore it is not out of place to commence an action against trespassers such as the Defendants or Tenants. The practice is that upon obtaining judgment and before execution, the judgment creditor of a necessity has to produce the names of those trespassers he has sued. He indicated that the emphasis here is upon execution of the judgment, not the commencement of the action.
3. Plaintiff has demonstrated to this Honourable court by way of evidence that the property in question belongs to this late father.
4. The name Selina Oppong is not known to the Plaintiff and that the persons' occupying the Plaintiff's late father's property are the tenants and these were the very people Plaintiff served the eviction notice on one after the other.

Counsel concluded by submitting the instant Application should be dismissed on the basis that the persons sued herein are trespassers who are in unlawfully occupation and are at liberty to come to court to say who placed them in the subject matter unlawfully. Counsel for the Defendants on points of law argued

that this is clearly landlord-tenants matter and has nothing to do with section 12(4) of Act 1036. He argued further by relying on the maxim "*generalia specialibus non derogant*", where there are general words in later Act capable of reasonable application without extending to subject especially dealt with by the earlier or special legislation and concluded that same cannot be brought this under the instant case.

Analysis

Indeed, it is not out of place for Counsel for the Plaintiff to describe the case as a land matter and may be right in subsuming this instant case under Act 1036 but Section 12(4) of Act 1036 which Counsel for the Plaintiff sought to rely on provides as follows; '*...A person with interest in the land may make an application to court for an interlocutory injunction against a trespasser on the land even though the name of the trespasser is unknown.* A careful reading and comprehension of Section 12(4) bothers on an '*interlocutory injunction against a trespasser on the land*' of which the court's record does not reflect same. The court is of the opinion that relying on the Land Act, 2020 (Act 1036) is inappropriate as there is no Application for Interlocutory Injunction before this court, rather, the Plaintiff herein has sued Defendants as Tenants but failed to indicate the names and the number of the Tenants he has sued. As such, the Plaintiff's failure to indicate the names of the Defendants on the Writ of Summons is purely a procedural issue which bothers on the contents of a Writ of Summons as provided in the High Court Civil Procedure Rules, 2004, C. I. 47.

Per the C.I. 47, the Writ of Summons is a single, composite, all-purpose form that initiates an action in a court of competent jurisdiction. It is often filed at the Registry of the Court and served in order to inform the Defendant of the nature

of the claim, the identity, and the address of the Plaintiff as well as the venue. It is trite that the initiator of the action is designated the 'Plaintiff' and the party against whom the action is initiated is the 'Defendant'. Order 2 of C. I. 47 is on Commencement of Proceedings and with respect to the Contents of a Writ, Order 2 Rule 3(1) provides that '*... every writ shall be as in Form 1 in the Schedule...*' Form 1 as provided at page 274 of C. I. 47 indicates that the names of both the Plaintiff and the Defendant ought to be written on the Writ. The learned S. Kwami Tetteh in his book; **Civil Procedure: A Practical Approach**; 2011 at page 183 stated that '*... the first and second names of each party must be stated correctly in the Writ of Summons*'.

Similarly, in the case of **Agbesi vs Ghana Ports and Harbours Authority** [2007-2008] SCGLR 469 at page 479, the Supreme Court held that '*...it was of vital importance that the identity and number of the parties in any suit was known at any given stage of the proceedings. The real necessity to do so was for the Plaintiff or the Defendant to know who their adversaries were so that they could raise issues of estoppel and mount defences, etc against each of them should it become necessary to do so at any stage of the proceedings or in the future, or for the Plaintiffs' claims or Defendant's liabilities fought on merits, it would also make service of court processes easier, for the parties would know who to serve with any process*'. In view of the above, the court is of the considered opinion that the Plaintiff's failure to indicate the names of the Defendants amounts to failure to comply with the Rules as specifically provided in Order 2 Rule 3 of C. I. 47.

The next issue for determination is *whether or not the Plaintiff's Writ of Summons and Statement of Claim can be struck out on grounds that the Contents of the Writ of Summons fails to indicate the names of the Defendants*. It can be deduced from the above that the Plaintiff failed to comply with the rules

of procedure and the observance of the rules of procedure is fundamental to the course of litigation for they provide the necessary framework for the achievement of justice between the parties. However, courts are also aware that too rigid or adherence to the rules in certain circumstances may inappropriately and unjustly deprive a party of his rights. What the court has to determine at this stage is whether Plaintiff's non-compliance is so fundamental as to warrant the instant Writ of Summons to be struck out.

In the Supreme Court case of **Standard Bank Offshore Trust Company Ltd Vrs National Investment Bank Ltd and Others** (J4 63 of 2016) [2017] GHASC 26, the Court proceeded to set out the arguments of the Appellants to include the fact that the persons on whose behalf the Plaintiff issued the writ were not disclosed or identified with specificity. The Apex Court opined, among others, that the rule is that, the identity of these entities as well as their addresses must be in place before the issuance of the writ of summons. The learned Justices concluded that the Writ of Summons cannot be amended after it had been issued to comply with requirements. See also the case of **NAOS Holding PSC vs Ghana Commercial Bank** [2005-2006] SCGLR 407.

It must be stated categorically that there are no rules imposed on parties prior to the commencement of an action, however, certain formalities must be complied with before an action is initiated especially with the contents of a Writ of Summons. Non-compliance can result in the action being struck out and as such the instant Application is granted. Consequently, the Writ of Summons and Statement of Claim issued at the Registry of this court on the 23rd day of March 2023 is hereby struck out for failing to comply with Order 2 Rule 3 of the High Court Civil Procedure Rules, 2004; C. I. 47.

**HALIMAH EL-ALAWA ABDUL-
BAASIT
CIRCUIT COURT JUDGE**