

IN THE CIRCUIT COURT (11) HELD IN ACCRA ON THE 3<sup>RD</sup> DAY OF APRIL 2023  
BEFORE H/H HALIMAH EL-ALAWA ABDUL-BAASIT SITTING AS AN  
ADDITIONAL CIRCUIT COURT JUDGE

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SUIT NO.

C2/83/2022

ARLA FOODS LIMITED

PLAINTIFF

VS.

EMMANUEL MENSAH

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DEFENDANT

**RULING**  
**MOTION ON NOTICE TO STRIKE OUT WRIT OF SUMMONS AND**  
**STATEMENT OF CLAIM**

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**BACKGROUND**

The Plaintiff on the 12<sup>th</sup> of January 2022 issued a Writ of Summons with a Statement of Case against the Defendant seeking for the following reliefs;

1. An Order for the Defendant to pay the sum of **One Hundred and Sixty-Nine Thousand Three Hundred and Seventy-Eight Ghana Cedis and Thirty-Three Pesewas (Ghc169,378.33)** to the Plaintiff being the outstanding debt owed by the Defendant to the Plaintiff.
2. Interest on the sum of **One Hundred and Sixty-Nine Thousand Three Hundred and Seventy-Eight Ghana Cedis and Thirty-Three Pesewas (Ghc169, 378.33)** at the Bank of Ghana prevailing interest rate for lending from January 2021 to the date of final payment.
3. Costs including lawyer's fees occasioned by this suit.
4. Other just and equitable reliefs.

On the 18<sup>th</sup> of January 2023, the Defendant/Applicant filed a Motion on Notice to Strike out the Plaintiff's Writ of Summons and Accompanying Statement of Claim.

### **DETERMINATION**

The basis of the Defendant/Applicant's instant Application is that on the Writ of Summons, the Plaintiff alleged that the Defendant/Applicant was trading under the name and style of Erniejay Investment which by necessary implication meant that the Defendant was the owner and/or director of the aforementioned Erniejay Investment. He stated further that he was only an employee of the Plaintiff's company and never had any contractual relations with the Plaintiff's company, but the Plaintiff at all material times had contractual relations with Erniejay Investment and did business with them. The Defendant/Applicant exhibited a search result from the Registrar General's Department which showed that the Plaintiff Company operated as a Sole Proprietorship with the name of the owner being Ernest Odame. The Plaintiff was duly served with the Defendant's Motion Paper as evidenced by the Affidavit of Service dated 25<sup>th</sup> January 2023 but failed to file an Affidavit in Opposition and was also absent on the day the Application was heard.

### ***Issues and Analysis***

The issues for determination are **whether the Defendant/Applicant is the proper person to be sued** and **whether the suit should be struck out**. In the instant case, the Plaintiff sued the Defendant/Applicant and described him as the Sole Proprietor of Erniejay Investment. The Defendant/Applicant has however denied

having any contractual relations with the Plaintiff as he is neither the owner nor director of the aforementioned entity. In the Supreme Court case of **Morkor vs Kuma** [1999-2000] 1 GLR 721, the court held that *'the proper Defendant in an action on a contract is the person (or persons) who made the promise the breach of which has created the cause of action'*. In the instant case, the Defendant/Applicant has not made any admission of any relationship between him and the Plaintiff as such, the proper person to be sued should be the sole proprietor in so far as specific personal liability can be established against him. It is clear on the face of Exhibit A of the Defendant/Applicant's Affidavit in Support which is the 'search result' from the Registrar General's Department dated 19<sup>th</sup> December 2022 and signed for the Registrar of Companies by Evelyn Vuvor, a Principal Company Inspector which stated, among others, that the company is a Sole Proprietor but gives the name of owner as Ernest Odame and not Emmanuel Mensah, the Defendant/Applicant herein.

The learned author Kwame Tetteh Esq. in his book **Civil Procedure: A Practical Approach**, 2011 at page 109 states that *'as a rule, the names appearing in the Writ of Summons as parties must be persons capable of litigating as Plaintiffs or Defendants. They must have the capacity to sue or be sued and the cause of action raised by Plaintiff against the Defendant must have accrued. Failing such factors, the court would not embark on the adjudication'*. It is patently clear from the Writ of Summons and the Statement of Claim that the Plaintiff indeed intended to sue the 'owner' of Erniejay Investment as all the averments contained therein attach liability against the owner of the said company. **Kwame Tetteh**, supra, continues that *'unless the parties to the action are recognised as individuals or entities for or against whom the Judgment of the court may be enforced, the adjudication will terminate in brutum fulmen. Litigation by its very nature presupposes the existence of a dispute between Two*

*(2) persons or parties. It is therefore natural that there must be before the court Two (2) persons or parties to enable an adjudication of the matter to be effectively carried out'.*

The Defendant/Applicant, at all material times was only an employee of the Erniejay Investment and therefore appears to have never had any contractual relations with the Plaintiff for any cause of action to accrue. I therefore find that the Defendant/Applicant is not a necessary party before the court and the courts opine that if after dealing with the misjoinder, there are persons before the court who claim rights and interest in the subject matter, only then would proceedings continue. If after the misjoinder, there is no party ..., then there will be no basis to continue to determine anything. See the case of **Rowland Kofi Dwamena vs. Richard Nartey Otoo and the Regional Lands Officer Lands Commission, Accra**; Civil Appeal No. J4/47/2018; [2019] DLSC 6501.

**Conclusion:**

The Plaintiff/Respondents were served with the Application but filed no Affidavit in Opposition. It is the view of the court that they are not opposed to the Application. The Application is therefore granted as the Defendant/Applicant is not the necessary party to the suit and since there is no longer a Defendant before the court, the suit is accordingly struck out. Cost of Three Thousand Ghana Cedis is awarded in favour of the Defendant/Applicant.

**COUNSEL**

- 1. Adelaide G. Adjovu Esq. for G. W. K. Phixon-Owoo Esq. for the Plaintiff/Respondent present.**
- 2. Delali Aniklo Esq. for Oliver Abada Esq. for the Defendant/Applicant absent.**

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