

IN THE CIRCUIT COURT (11) HELD IN ACCRA ON THURSDAY, 4TH DAY OF APRIL
2023 BEFORE H/H HALIMAH EL-ALAWA ABDUL-BAASIT SITTING AS AN
ADDITIONAL CIRCUIT COURT JUDGE

SUIT NO. C2/109/2022

CHRISTIAN NII ADOM LOKKO
a.k.a. NII ADOM LOKKO
H/NO. 1, OSU ANORHOR, ACCRA.

PLAINTIFF

VS.

NII APO ABORHE
OSU-ACCRA

DEFENDANT

RULING

MOTION ON NOTICE FOR JOINDER AS DEFENDANTS

BACKGROUND:

On the 20th of July 2022, the Plaintiff issued a Writ of Summons and a Statement of Claim sealed at the Registry of this Court against the Defendant praying for the following;

1. Declaration of Title.
2. Recovery of possession.
3. Perpetual injunction restraining the defendant, his agents, assigns, privies, workmen, servants and all those who claim through him from interfering with the Plaintiff's quiet enjoyment of the disputed land.
4. Cost.
5. Any other Reliefs that might come to the fore through the pleadings and evidence.

The Defendant is yet to file a Statement of Defence but on the 9th of August 2022, he filed a Motion on Notice for Joinder of the Attorney-General on behalf of the Ministry of Transport and Ministry of Tourism, Culture and Creative Arts, the Ghana Ports and Harbours Authority (GHAPPOHA) and the Korle Klottey Municipal Assembly as Defendants to the suit.

The Defendant/Applicant's Case

The Defendant/Applicant argues that the Plaintiff/Applicant has sued him in his personal capacity as the Chief Fisherman who has oversight responsibility over the Landing Beach but the ownership of the subject matter land as well as all adjoining areas fall beyond his purview since the State has a vested interest in the development of the area including the portion the Plaintiff/Respondent claims to have acquired, hence the need to join the aforementioned parties. His **Exhibit NAA 1** attached to the Affidavit in Support of the Application is a map showing a Marine Drive Tourism Investment Project of the Ministry of Tourism, Culture and Creative Arts with signatures of various Heads of institutions such as Regional Coordinating Director (RCC), Metropolitan Chief Executive, Accra Metropolitan Assembly (AMA), Chief Director, Ministry of Tourism, Culture and Creative Arts, Urban Roads, among others.

The Plaintiff/Respondent's Case

The Plaintiff/Respondent (hereinafter referred to as the Plaintiff) in his Affidavit in Opposition deposed that prior to the inception of the construction of the Landing Beach, there was a meeting with the Assembly man on the premises of the Defendant with the Respondent being in attendance as well as a Forum held

by the Municipal Chief Executive for Korle Clottey Municipal Assembly where it never came to the fore that the disputed land is a vested land. The Plaintiff/Respondent argued further that the said Exhibit NAA 1 does not point or suggest that the disputed land is the Landing Beach, neither does it point to the fact that the said exhibits covers the Respondent's land.

Determination

Generally speaking, the court will make all such changes in respect of parties as may be necessary to enable an effectual adjudication to be made concerning all matters in dispute. In other words, the court may add all persons whose presence before the court is necessary in order to enable it effectually and completely to adjudicate upon and settle all the questions involved in the cause or matter before it. The purpose of the joinder therefore is to enable all matters in controversy to be completely and effectually determined once and for all. But this would depend upon the issue before the court, that is, the nature of the claim. See **Sam vs. Attorney-General** [1999-2000] 2 GLR 327

The issue now before the court in the instant case is the determination of **whether or not the Attorney General on behalf of the Ministry of Transport and Ministry of Tourism, Culture and Creative Arts, Ghana Ports and Harbours Authority and the Korle Klottey Municipal Assembly are necessary parties before the court and therefore ought to be joined as Defendants.**

Analysis

This Application is per Order 4 r 5 of the High Court Civil Procedure Rules, 2004, C. I. 47 and Order 4 r 5(2) (b) provides that *“At any stage of proceedings the court may on such terms (a) order any person who ought to have been joined as a party or whose presence before the Court is necessary to ensure that all matters in dispute in the*

proceedings are effectively and completely determined and adjudicated upon to be added as a party.” This Rule vests the court with that power at any stage of the proceedings to order any person/party who ought to have been joined as a party or whose presence before the court is necessary to ensure that all matters in dispute in the proceedings are effectively and completely determined and adjudicated upon to be added as a party.

In the case of **Indepth Network vs. Daniel Kofi Baku & Nine Others** in SUIT NO: GJ/826/2018/[2019]DLHC 6809, the learned **Justice Kweku T. Ackaah-Boafo**, ‘...it is worth noting that the Courts have differed over the grounds for joining a person whose presence is necessary for the effectual determination of a matter’. He stated further that ‘... my read of the earlier cases inform me that two legal positions have over the years been articulated. The two positions can be referred to as narrow and wide views. While such cases as: (i) *APPENTENG v BANK OF WEST AFRICA LTD. (1961) GLR 81*; (ii) *BONSU v BONSU (1971) 2 GLR 242*; and (iii) *ZAKARI v PAN AMERICAN AIRWAYS (1982- 83) GLR 975* can be said to illustrate the narrow view. Other cases such as *USSHER v DARKO SUPRA* and *COLEMAN v SHANG (1959) GLR 389* in my view represent the wide position’. In **Ussher vs Darko** (supra), Apaloo JA (as he then was) stated that “...the jurisdiction of a court to join a party to an action to avoid multiplicity of suits ... might be exercised at any stage of the proceeding... Whether the application should be acceded to or denied, was a matter for the exercise of the trial judge’s discretion and save that such discretion must be exercised judicially and in a manner conformable with justice, no fixed rules existed as to when and how it should be exercised.”

In the instant case, the Defendant/Applicant states he is only a Chief Fisherman who has oversight responsibility over the Landing Beach but the ownership of the subject matter land as well as all adjoining areas fall beyond his purview

since the State has a vested interest in the development of the area including the portion the Plaintiff/Respondent claims to have acquired, hence the need to join the aforementioned parties. In considering the facts before the court as well as the reliefs being sought by the Plaintiff, the presence of the Attorney General on behalf of the Ministry of Transport and Ministry of Tourism, Culture and Creative Arts, Ghana Ports and Harbours Authority and the Korle Klottay Municipal Assembly will aid the court in the determination of the case as they are necessary parties to this suit to enable proper adjudication as contemplated in law.

The Court is of the considered opinion that joining the aforementioned parties will ensure that the whole case is before the Court for a complete and final determination and avoid multiplicity of suits which is likely to be the result if this instant Application is refused. Order 1 Rule (2) of C.I. 47 provides that; *'These Rules shall be interpreted and applied so as to achieve speedy and effective justice, avoid delays and unnecessary expense, and ensure that as far as possible, all matters in dispute between parties may be completely, effectively and finally determined and multiplicity of proceedings concerning any of such matters avoided'*. In the case of **Comet Construction Co., Ltd. vs Ghana Commercial Bank, Tema (Garnishee) [1976] 2 GLR 220**, the court held that *'... a court charged with the primary function of dispensing justice and with the duty of ensuring a reduction in the number if not the elimination of a multiplicity of suits is unworthy of its name ...'*

The Plaintiff/Respondent however deposed that no state organization or institution can be made a party or a defendant without being served with pre-legal action or an intention to take a legal action. This deposition was made pursuant to Section 10 of the State Proceedings Act, 1998 (Act 555) which provides on *Notice of civil action to Attorney-General* as follows; (1) *A person who*

intends to institute civil action against the Republic shall serve on the Attorney-General a written notice of that intention at least thirty days before the commencement of the action. (2) The notice under subsection (1) shall be served by the claimant or by the lawyer or agent of the claimant (a) on the Attorney-General or an officer of the Attorney-General's Department, or (b) in a case where action is to be commenced in a Region, on an officer of the Attorney-General's Department in that Region. The evidence on record shows that the Attorney General, the Ministry of Tourism, the Ministry of Transport as well as the Korle Klottey Municipal Assembly were notified as far back as the 25th and 26th of October 2022 respectively.

Conclusion

In light of the above discourse, it is the Court's considered opinion that it is necessary at present to have the **Attorney General on behalf of the Ministry of Transport and Ministry of Tourism, Culture and Creative Arts, Ghana Ports and Harbours Authority and the Korle Klottey Municipal Assembly** before the court for the determination of the matter now before it. The Application for Joinder is granted.

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