

IN THE CIRCUIT COURT OF GHANA HELD IN ACCRA AT CIRCUIT COURT '2'
ON FRIDAY, 12TH APRIL, 2024 BEFORE HIS HONOUR ISAAC ADDO

SUIT NO. C2/57/2024

1. J.K. THEODORE TAYLOR

2. MRS MONICA NANA FUAH NOAH ===== PLAINTIFFS

3. DUKE SABBAN TAYLOR

**ADMINISTRATORS DE BONIS NON OF
THE ESTATE OF NII KWABENA BONNIE III
H/NO. C7/YAT CASTLE ROAD - KOKOMLEMLE**

VRS

GODWIN ADJETEY SOWAH ===== 1ST DEFENDANT
ACCRA

HAAVAD SCHOOLS GHANA LIMINTED ===== 2ND DEFENDANT
KOKOMLEMLE, ACCRA

3RD PLAINTIFF PRESENT

1ST & 2ND PLAINTIFFS ABSENT

DEFENDANTS ABSENT

MAGDALENE NORVI ABUI KOUAKEY, ESQ. FOR THE PLAINTIFFS/RESPONDENTS
PRESENT

YAW ADJEI AFFRAM, ESQ. FOR THE 2ND DEFENDANT/APPLICANT PRESENT

**RULING ON MOTION ON NOTICE FOR AN ORDER TO SET ASIDE THE WRIT
OF SUMMONS**

Though this may application may appear very simple question, yet I think it has far-reaching consequences having regard to the persuasive divergent views held by the lawyers for the parties in this case on the failure to sign the Writ of Summons while signing the Statement of Claim. The question is; whether this can result in the setting aside of the Writ of Summons.

The Plaintiffs (hereinafter referred to as the Respondents) commenced this action by a Writ of Summons accompanied with a Statement of Claim filed on the 5th October, 2023 seeking the following reliefs:

- i. A declaration that the terms of the lease agreement have been breached by the Defendants.
- ii. An order directed at the Defendants to pay the Plaintiffs an amount of One Hundred and Sixty Seven Thousand Ghana Cedis (GH¢167,000.00) being rent arrears.
- iii. An order directed at the Defendants to pay interest from 2019 to date of final determination of the action.
- iv. An order directed at the Defendants to vacate the land for Plaintiff to repossess.
- v. Damages for breach of contract.
- vi. Cost, including legal fees.
- vii. Any other order(s) as the Court may deem fit.

Before this Court is a Motion on Notice to Set Aside Writ of Summons filed by the 2nd Defendant (hereinafter referred to as the Applicant). Under Order 9 rule 8 of CI 47, a Defendant may apply to set aside a Writ of Summons at any time before filing appearance. However, if a Defendant files a Conditional Appearance, he must apply to the court within fourteen (14) days

- a. to set aside the Writ of Summons;
- b. to declare that the writ of notice of it has not been served on the defendant; or
- c. discharge any order that gives leave to serve the notice on the defendant outside the country.

The Applicant in its Affidavit in Support of the motion averred that the Writ of Summons which was served on it was unsigned. That a Search conducted at the Registry of this Court also indicated that the Court's copy of the Writ was at the time it was filed unsigned. The Applicant further aver that due to the matters aforesaid, the Writ of Summons is defective and ought to be set aside.

The Respondents opposed the application. The Applicant's opposition is catalogued at paragraphs 7-10 of the Affidavit in Opposition to the motion. I reproduce same below:

"7. That I am advised by Counsel and verily believe same to be true that a Writ of Summons is supposed to be filed together with a Statement of Claim according to the rules of court.

8. That I am advised by Counsel and verily believe same to be true that where a Writ of Summons is issued by a lawyer, it must be endorsed by the lawyer.

9. That failure of Counsel to sign the Writ of Summons which was together with a signed Statement of Claim makes the Writ irregular but may be cured by an order of the court to rectify the said irregularity by endorsing the Writ with the signature of the lawyer that issued it.

10. That I am advised by Counsel and verily believe same to be true that in the interest of justice and to avoid delay and unnecessary cost, this Honourable Court has the discretion to order the Writ to be endorsed for the action to take its normal course.

As admitted by the Respondent, the Writ of Summons is unsigned but the accompanying Statement of Claim is signed. What then is the legal effect of this situation this Court is encountered with? Under Order 2 rule 6 of the High Court (Civil Procedure) Rules, 2004 (CI 47), no Writ shall be issued and

filed unless it is accompanied with a Statement of Claim. Also, Order 82 rule 3 of the CI 47, i.e. the Interpretation section defines a Writ as follows:

‘Writ’ includes a Writ of Summons and Statement of Claim or a Petition in a cause or matter.

In the case of *KAMA Health Services Ltd vrs Unilever Ghana Ltd* [2013-2014] 2 SCGLR 861 @ 884, the Supreme Court per Benin JSC stated that the reliefs which are stated in the statement of claim and on which facts have been pleaded will supersede the endorsement on the writ.

Gbadegbe JSC in the case of *Axes Co. Ltd (No.2) vrs Opoku & Others (No.2)* [2012] 2 SCGLR 1214 @ 1222 stated:

“The writ of summons ought to be read together with the statement of claim in order to determine if there was any cause of action before the court. This is so because a statement of claim may in appropriate cases as provided for in Order 11 rule 15(2) of CI 47, the High Court Rules, amplify or diminish the scope of the writ on which it is founded.”

In the case of *Nana Yaw Owusu & Others vrs Hydrafoam Estates Ltd* [2014] 78 GMJ 28 @ 44 per Anin Yeboah JSC (as he then was):

“The defect on the writ was in our view cured by the accompanying statement of claim which was filed together with the writ. The cause of action of the plaintiff was amply pleaded in the Statement of Claim.”

It can be gleaned from the above authorities that a defect in the Writ can be cured by the accompanying Statement of Claim. On the face of the Writ of Summons, it is clear that it is not signed though the Respondents’ lawyer has her Firm’s Address, name, Licence Number and Chambers Number indicated on the Writ. What is missing is the signature. This is what is underneath the indorsement on the Writ.

“DATED AT ACCRA THIS 25TH DAY OF SEPTEMBER, 2023 AT OAK & WUUDS LAW, 4TH SUIT, ZION HOUSE, NO. 7 NII YEMOH AVENUE, BOUNDARY ROAD, SHIASHIE, OIC ROAD, ACCRA

MAGDALENE NORVI ABUI KOUAKEY ESQ.

LIC. No. eGAR04309/23

C/L No. ePP00756/22”

“This writ was issued by MAGDALENE NORVI ABUI KOUAKEY ESQ whose address for service is OAK & WUUDS LAW, 4TH SUIT, ZION HOUSE, NO. 7 NII YEMOH AVENUE, BOUNDARY ROAD, SHIASHIE, OIC ROAD, ACCRA”

However, the accompanying Statement of Claim has been signed by the lawyer with her address, name, Licence and Chambers Numbers duly endorsed therein.

Order 81 rule 1 of CI 47 reads:

“Where, in beginning or purporting to begin any proceedings or at any stage in the course of or in connection with any proceedings, there has, by reason of any thing done or left undone, been a failure to comply with the requirements of these Rules, whether in respect of time, place, manner, form or content or in any other respect, the failure shall not be treated as an irregularity and shall not nullify the proceedings, any step taken in the proceedings, or any document, judgement or order in it.

In the case of Boakye vrs Tutuyehene [2007-2008] 2 SCGLR 970 @ 980, Justice Asiamah JSC stated:

“The new Order 81 has made it clear that perhaps apart from lack of jurisdiction in its true and strict sense, any other wrong step taken in any legal suit should not have the effect of nullifying the judgement or the proceedings.”

In the case of the Republic vrs High Court, Accra, Ex Parte Allgate Co. Ltd., (Amalgamated Bank Limited, Interested Party) [2007-2008] 2 SCGLR 1041 @ 1054 per Dr. Date-Bah JSC:

“Where there has been non-compliance with any of the rules contained in the High Court (Civil Procedure) Rules 2004 (CI 47), such non-compliance is to be regarded as an irregularity that does not result in nullity, unless the non-compliance is also a breach of the Constitution or of a statute other than the Rules of Court or the rules of natural justice or otherwise goes to jurisdiction.”

In the humble view of this Court, the unsigned Writ of Summons does not breach the Constitution or a Statute or the rules of natural justice. The Writ of Summons does not stand alone. Wherever a Writ of Summons is used to initiate civil proceedings in the Circuit Court or High Court, a Statement of Claim must also be seen. The Writ of Summons is always accompanied by a Statement of Claim. The two are like Siamese twins joined together. As stated in the authorities provided above, the Writ of Summons must always be read together with the Statement of Claim.

It is my view that this instant application to set aside the Writ of Summons is unmeritorious and misconceived. The application fails in its entirety and same is hereby dismissed.

Leave is hereby granted to the Plaintiffs to file an endorsed/signed Writ of Summons.

I will make no order as to costs. The parties are to bear their own costs.

(SGD.) H/H ISAAC ADDO

CIRCUIT COURT JUDGE

12TH APRIL, 2024