

IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT OF JUSTICE, COMMERCIAL DIVISION HELD IN ACCRA ON MONDAY, THE 11<sup>TH</sup> DAY OF MARCH, 2024 BEFORE HIS LORDSHIP FRANCIS OBIRI J.

SUIT NO. CM/BDC/0145/2024

ACCAM OBED LAMPTEY -

PLAINTIFF/RESPONDENT

Vs

BETWAY GHANA LTD. -

DEFENDANT/APPLICANT

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### RULING

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On 22<sup>nd</sup> January 2024, the Defendant/Applicant (hereinafter called the Applicant) filed motion on notice in this case.

The motion is praying the court to dismiss the instant suit upon the grounds contained in the accompanying affidavit. The motion is supported by affidavit and exhibits. The relevant paragraphs are as follows:

4. That Plaintiff/Respondent (Respondent) commenced this action against Applicant on 28<sup>th</sup> November 2023 for the reliefs endorsed on the Writ of Summons.
5. That on 15<sup>th</sup> December 2023, the Applicant caused an appearance to be entered on its behalf.
6. That I am advised, and verily believe same to be true, that litigation in the common law system is adversarial. By this, an action ought to be commenced

by at least, a person, be it natural or artificial (legal person), against at least, another legal person.

7. That I am also advised, and verily believe the same to be true, that an action commenced not against a legal person is a nullity as it sins against the rules of this Honourable Court, settled practice, and case law.
8. That I am advised, and verily believe the same to be true, that where a process is a nullity, the said nullity can neither be waived by a Court of competent jurisdiction nor amended under the orders or rules of a court of competent jurisdiction. As a consequence of the said nullity, a court is not even seized with jurisdiction to hear the matter.
9. That a recent search conducted at the Office of the Registrar of Companies (ORC) on the entity BETWAY GHANA LIMITED (Applicant) revealed no trace of the Applicant in the records of the ORC.

Attached and marked as exhibit 'A' series is a copy of the letter written to the ORC to conduct the search ('A') and the results of the search ('A1').

10. That I am advised, and verily believe the same to be true, that there are no available registration documents in the name of the Applicant.
11. That it is without doubt that the Applicant is not a legal person. I am advised and verily believe the same to be true, that consequently, this Honourable Court's jurisdiction has not been properly invoked in respect of the commencement of the instant suit.
12. That I am also advised, and verily believe the same to be true, that at present, the Respondent is the only party in this suit. That the same is not permissible under the rules of this Honourable Court, settled practice, and case law.
13. That I am advised, and verily believe the same to be true, that even without this application, when this Honourable Court's attention is drawn to the fact that

the Applicant is not a legal person, the Court is duty bound to dismiss the instant suit as a nullity.

The Plaintiff/Respondent (hereinafter called the Respondent) resisted the application. He filed affidavit in opposition with exhibits attached. The relevant paragraphs are as follows:

3. That on 26<sup>th</sup> November 2023, the Plaintiff/Respondent caused to be issued and served on the Defendant/Applicant a Writ of Summons and Statement of Claim seeking the reliefs endorsed therein.
4. That the Defendant/Applicant entered unconditional appearance through its lawyer, Dr. Kwaku Ainuson of AB LexMall and Associates.
5. That on 22<sup>nd</sup> January 2024, the Defendant/Applicant filed a motion to dismiss the Plaintiff's suit on grounds that the suit was commenced against a non-legal person (i.e BETWAY GHANA LIMITED).
6. That I am vehemently opposed to the said application and I consider the contention of the Applicant, to say the least, quite unfortunate. It is frivolous, vexatious, and utterly preposterous. My reasons are as stated in the subsequent paragraphs.
7. That following the freezing of the Plaintiff's account by the Applicant, counsel for the Plaintiff served a Demand Notice dated 30<sup>th</sup> August, 2023 on **BETWAY GHANA LIMITED** with a copy to the Gaming Commission, the Regulator for the Sports Betting/Gaming industry. Please find attached and marked exhibit 'AOL1' a copy of the herein referenced letter.
8. That the aforementioned letter, despite being addressed to BETWAY GHANA LIMITED, received a response from Dr. Kweku Ainuson, Esq. of AB LEXMALL & ASSOCIATES, acting on behalf of Sports Betting Group Ghana Limited. It is noteworthy, that Dr. Kweku Ainuson is also the legal representative for the

Defendant/Applicant in this suit. Please find attached and marked as exhibit 'AOL2' a copy of the response letter.

9. That the first paragraph of the said response letter reads: **“We act for and on behalf of Sports Betting Group Limited (our client). We have their permission to write to you on the above subject matter”**. Given that a lawyer cannot represent a non-existent entity, we infer that the above statement is an acknowledgement by the lawyer, that Sports Betting Group Ghana Limited is a juridical person under the laws of Ghana.
10. That the Defendant per this application denies the legal status of Betway Ghana Limited, yet it assumed the responsibility and took time to address Plaintiff's claim contained in the notice of demand (i.e Exhibit 'AOL1').
11. That I have been advised by counsel, and verily believe the same to be true, that the response letter (i.e Exhibit 'AOL2') is an implied admission that Betway Ghana Limited and Sports Betting Group Ghana Limited are one and the same with one being the *alter ego* of the other.
12. That I have further been advised by counsel, and verily believe same to be true, that Sports Betting Group Ghana Limited would not have taken upon itself the responsibility to address the Plaintiff's claims if it had no connection with Betway.
13. That a careful reading of the entire exhibit 'AOL2' shows that there is no dichotomy or distinction between Sports Betting Group Ghana Limited and Betway Ghana Limited. For instance, the introductory part of paragraph 1 reads **“our client acknowledges that on or about the 19<sup>th</sup> of August, 2023, Accam Obed Lamptey placed some bet using the build-a-bet feature on the Betway betting platform with the following bet slip ID”**.

Again, by this acknowledgement, Sports Betting Group Ghana Limited has stepped into the shoes of Betway Ghana which lends credence to our belief that the two constitute the same company.

15. That even though the Applicant per its exhibit 'A' series alleges that Betway Ghana Limited is not incorporated under Ghanaian laws, there is no denying that Betway Ghana is the alter ego of Sports Betting Group Ghana Limited, they are inseparable, one and the same.
16. That in any event, the Defendant's name as **presented on the writ is "BETWAY GHANA LIMITED a.k.a SPORTS BETTING GROUP GHANA LIMITED, 32 Castle Road, Adabraka-Accra"**. Consequently, the inclusion of Sports Betting Group Ghana Limited as the alias or alternative name for Betway Ghana Limited implies that Plaintiff intended to sue and indeed did sue Sports Betting Group Ghana Limited, regardless of the order in which the names are arranged on the face of the Writ.
17. That the content of exhibit 'AOL2' unequivocally indicates that;
  - a. Sports Betting Group Gh. Ltd. admits knowledge of and responsibility for the transaction that took place between the purported non-existent Betway Ghana and the Plaintiff.
  - b. A relationship exists between Sports Betting Group Gh. Ltd. and Betway Ghana which renders them *alter egos* of each other, making them inseparable.
18. That I have been advised by counsel and verily believe same to be true that a Defendant who enters UNCONDITIONAL APPEARANCE waives his right to raise any preliminary objection, or protest the regularity of the Writ. Accordingly, the Defendant by entering unconditional appearance has signified to the court its readiness to participate in the suit and therefore

debarred from raising any protest or objection save on grounds of capacity, natural justice, jurisdiction and a breach of statute or the Constitution.

19. That assuming for the sake of argument that Betway Ghana is the Trade Name for Sports Betting Group Ghana Limited, this fact alone does not warrant a dismissal of the suit. Because the error, if so, declared by the Honourable Court, is a misnomer that constitutes a mere irregularity which can be cured through an amendment per the Rules of this Court.

The Applicant filed supplementary affidavit in support of its motion with the leave of the court. The relevant paragraphs are as follows:

9. That I am advised, and verily believe the same to be true, that it is fundamental that before an action is commenced, a party who intends to sue another party must as a matter of settled law and practice ascertain whether the potential party to be used can in fact be sued or otherwise.
10. That in paragraph 2 of the statement of claim filed on 28<sup>th</sup> November 2023, the Respondent indicated that the Applicant is a limited liability company registered under the laws of Ghana, licensed and engaged in the business of sports betting. I am advised and verily believe same to be true, that in Ghana, an entity may be set up to do business if registered by law with the Office of the Registrar of Companies, (formerly the Registrar's General Department) either as a company properly so called, a partnership, or a sole proprietorship. Thus, by law, the ORC has the database of all companies set up in Ghana. The statutory body that has the list of all companies set up in Ghana has been unequivocal by way of exhibit 'A1' that an entity in the name of the Applicant does not exist in their records. I am further advised and verily believe the same to be true, that to the extent that an entity in the name of the Applicant has not been incorporated with the ORC, the Applicant cannot sue or be sued.

14. That what is worse is that it was not even the trading name of SBGGL that was sued. Rather, it was a completely different "limited liability" company that did not even exist. In any case, I am further advised, and verily believe the same to be true, that a trading name can neither sue nor be sued. Again, a trading name is not registered as a company to do business.
15. That in direct response to paragraph 10 of the affidavit in opposition to the instant application, I am advised and verily believe the same to be true, that the legal status of the Applicant is a question of law. The said legal status cannot be implied in any way.

When the motion came up for hearing, counsel for both parties relied principally on their affidavits in support and in opposition. My duty at this stage is to make a determination one way or the other.

Let me say from the onset as an answer to paragraph 18 of the Respondent's affidavit in opposition, that the fact that a party has filed a non-conditional appearance does not foreclose his right to file a motion to question the competency or the propriety of the action under the inherent jurisdiction of the court.

The Respondent has pleaded in his statement of claim that he won a football bet of over GHS 400,000 on the Applicant platform. However, the Applicant has failed to pay the amount in full to him. As to whether the allegations in the Respondent's statement of claim are true or not cannot be determined at this stage. The Respondent has however pleaded cause of action against the Applicant at least, at this stage.

A cause of action is defined as a factual situation, the existence of which would entitle one person to obtain from the court a remedy against another person. The phrase, cause of action, also includes every fact which is material to be proved to entitle the Plaintiff to succeed and every fact which the Defendant would have a right to traverse. Cause of action also means, the particular act of the defendant which gives the plaintiff his cause of complaint.

See: **AMPRAWUM MANUFACTURING CO. LTD v DIVESTITURE IMPLEMENTATION COMMITTEE** [2009] SCGLR 692

**JOHN DRAMANI MAHAMA v ELECTORAL COMMISSION AND NANA ADDO DANKWA AKUFO-ADDO** [2021] 171 GMJ 473 SC

**MENSAH v INTERCONTINENTAL BANK** [2010] SCGLR 118

**MADAM RANDI LARTEY & 2 ORS v YAW ABOAH DJIN & ANOR** [2022] 177 GMJ 89 SC

Every party before suing must satisfy himself or herself, that he has a cause of action at the time of the institution of the action against his opponent upon which a relief can be granted.

See: **REPUBLIC v HIGH COURT SUNYANI; EX PARTE COLLINS DAUDA (BOAKYE-BOATENG – INTERESTED PARTY)** [2009] SCGLR 447

**NEW PATRIOTIC PARTY v NATIONAL DEMOCRATIC CONGRESS AND OTHERS** [1999-2000] 2 GLR 506 SC

The Applicant contends that it does not exist to be sued. The Respondent contends otherwise. The court therefore embarked on legal excursion suo motu to resolve the above legal conundrum as to the legal identity of the Applicant. And also, as to whether the Respondent's writ of summons has properly invoked the jurisdiction of the court for the merits of the case to be determined.

The court has taken judicial notice of the fact, that on Facebook, the Applicant's account name is Betway Ghana with over 245,000 followers. It says, it sponsors Atletico de Madrid, Westham among other football teams.

On Wikipedia, the Applicant is referred to as Betway Ghana. On YouTube, the Applicant can be traced with the name Betway Ghana. On Google, the Applicant is Betway Ghana.



On Twitter or X, it is described as Betway Ghana. On Instagram, the Applicant is called Betway Ghana. On LinkedIn, the Applicant is referred to as Sports Betting Group Ghana Limited (Betway Ghana).

These are official sources of information. The law is that a court can take judicial notice of facts which are so generally known within the territorial jurisdiction of the court or from a source or sources which is, or are accurate.

The Court can therefore resort to such sources whose accuracy cannot be reasonably questioned. This is sanctioned under section 9 of the Evidence Act, 1975 (NRCD 323).

Under section 9(3) of Act 323, judicial notice need not be requested by any party before the court can resort to it. That is, the court can take such judicial notice suo motu as in this case. Again, under section 9(6) of NRCD 323, such judicial notice can be taken at any stage of the action.

**See: ECOBANK NIGERIA PLC v HISS HANDS HOUSING AGENCY AND ANOTHER [2017-2018] 1 SCLRG 355**

**MARTIN v BARCLAYS BANK (GH.) LIMITED [2017-2018] 1 SCLRG 800**

**HILODJIE AND ANOTHER v GEORGE [2005-2006] SCGLR 974**

**MENSAH AND OTHERS v THE REPUBLIC [1979] GLR 523**

**NYARKO v THE REPUBLIC [1974] 1 GLR 206**

The Applicant's name as stated on Facebook, Wikipedia, YouTube, Google, Twitter (X), Instagram, and LinkedIn creates a presumption, that the Applicant is called Betway Ghana. It is the law that such presumption imposes upon the party against whom it operates, as in this case the Applicant, the burden of producing evidence and the burden of persuasion as to the non-existence of the presumed fact. This is sanctioned under section 20 of NRCD 323.

**See: MARY AKYAA BOAKYE (SUBSTITUTED BY YAW BOAKYE ADJEI) v THE PRESIDING BISHOP OF THE METHODIST CHURCH & 3 OTHERS, Civil Appeal No. J4/14/2021, Dated 31<sup>st</sup> March, 2021 SC**

From the above sources indicated by the court such as, Facebook, Wikipedia, YouTube, Google Twitter (X), Instagram and LinkedIn which accounts or information were provided by the Applicant itself, the Applicant portrayed to the whole world that it is also called **Betway Ghana** and is into the business of betting among other activities.

It is therefore my view, that the Applicant is estopped by its own conduct to deny its name or an act or conduct it made the whole world to believe to be true.

The law is settled under section 26 NRCD 323 as follows; **“Except as otherwise provided by law, including a rule of equity, when a party has, by his own statement, act or omission, intentionally and deliberately caused or permitted another person to believe a thing to be true and to act upon such belief, the truth of that thing shall be conclusively presumed against that party or his successors in interest in any proceeding between that party or his successors in interest and such relying person or his successors in interest.”**

Again, a party whose conduct by his own statement, acts or omission has intentionally caused another person to believe a thing to be true and rely upon such belief will be estopped by his conduct to deny what he made the other person to believe. And such conduct binds the parties themselves, their assigns, privies etc.

**See: AFRIKANIA MISSION CHURCH v SEBA CONSTRUCTION LIMITED [2013] 59 GMJ 176 CA**

**NARTEY v MECHANICAL LLOYD ASSEMBLY PLANT LIMITED [1987-88] 2 GLR 314 SC**

**AGO SAI & OTHERS v KPOBI TETTEH TSURU III [2010] SCGLR 762**

**OBENG AND OTHERS v ASSEMBLIES OF GOD CHURCH, GHANA [2010] SCGLR 300**

**ASIA v AYEDUVOR AND ANOTHER [1987-88] 1 GLR 175 CA**

**T.K. SERBEH & CO. LTD v MENSAH [2005-2006] SCGLR 341**

It is therefore settled law, that it would be unconscionable for a party to be permitted to deny something which he had knowingly or unknowingly allowed another or encouraged another person to assume to the person's detriment unless there is evidence to the contrary.

**See: GHANA CABLE COMPANY LIMITED v BARCLAYS BANK GHANA LIMITED [2010] SCGLR 108**

**GREGORY v TANDOHI IV & HANSON [2010] SCGLR 971**

From the sources stated above, the Applicant made the whole world including the Respondent to believe that it is also called Betway Ghana.

It is settled law, that in the interest of justice, a party can be granted leave to amend the capacity of a person who has sue or been sued.

**See: OBENG v ASSEMBLIES OF GOD CHURCH, GHANA (SUPRA)**

It is also the law, that the courts have to ensure that merit of cases are heard and determined in the interest of justice and should not let that duty be circumvented by mere technicalities.

**See: GHANA PORTS AND HARBOURS AUTHORITY v ISSOUFOU [1993-94] 1 GLR 24 SC**

**OBENG v ASSEMBLIES OF GOD CHURCH, GHANA (SUPRA)**

In this case, the Respondent even described the Applicant on the writ of summons as Betway Ghana Limited alias Sports Betting Group Ghana Limited which the Applicant admit is its name.

In my view, the fact that the Respondent added “Limited” to Betway Ghana is a misnomer which can be corrected through an amendment.

Furthermore, in this case, the Applicant was served with the writ of summons at its head office in Accra after the Respondent had directed service, as per the affidavit of service commissioned by the Registrar of this court on 13<sup>th</sup> December, 2023.

It is therefore the law, that once the Respondent pointed out his purported tortfeasor (the Applicant herein) who was served with the writ of summons, any mistake in the name of the Defendant or the Applicant as in this case can be corrected by amendment even by the court suo motu and not the dismissal of the action.

See: **REPUBLIC v THE DISTRICT MAGISTRATE, PRESTEA; EX PARTE NKANI [1992] 2 GLR 385**

It is also my view, that the court should be flexible in the application of its rules to avoid unjust enrichment.

It is trite law, that unjust enrichment is against public policy. It amounts to deceit and dishonesty. Therefore, technicalities should not circumvent the power of the court to investigate it.

The law is also settled, that statute of limitation, defect in stating a proper relief or name on a writ of summons, cannot even be a bar to prevent a party from suing another person under the principle of unjust enrichment which goes against him.

See: **ANKRAH v OFORI [1963] 2 GLR 405**

**QUAGRAINE v ADAMS [1981] GLR 599 CA**

**MENSAH v BERKOE [1975] 2 GLR 347**

The Black's Law Dictionary, 9<sup>th</sup> Edition at page 1678 defines unjust enrichment as **“a benefit obtained from another, not intended as a gift and not legally justifiable for which the beneficiary must make a restitution or compensation”**.

From the above rendition, I do not find any merit in the application. Any defect in the Applicant's name can be corrected through amendment since the Respondent pointed out the Applicant as his alleged tortfeasor. I will therefore proceed to dismiss the Application and same is accordingly dismissed. I will award cost of **GH¢8,000.00** in favour of the Respondent against the Applicant.

**SGD.**

**FRANCIS OBIRI**

**(JUSTICE OF THE HIGH COURT)**

**COUNSEL**

**MICHAEL ADU-GYAMFI HOLDING BRIEF FOR LESLIE OKU FOR THE PLAINTIFF/RESPONDENT**

**YAW KYERE AMPADU WITH VANESSA AWURABENA DAVIES HOLDING BRIEF FOR DR. KWEKU AINUSON FOR THE DEFENDANT/APPLICANT**

**AUTHORITIES**

- 1. : AMPRATWUM MANUFACTURING CO. LTD v DIVESTITURE IMPLEMENTATION COMMITTEE [2009] SCGLR 692**
- 2. JOHN DRAMANI MAHAMA v ELECTORAL COMMISSION AND NANA ADDO DANKWA AKUFO-ADDO [2021] 171 GMJ 473 SC**
- 3. MENSAH v INTERCONTINENTAL BANK [2010] SCGLR 118**
- 4. MADAM RANDI LARTEY & 2 ORS v YAW ABOAH DJIN & ANOR [2022] 177 GMJ 89 SC**

5. **REPUBLIC v HIGH COURT SUNYANI; EX PARTE COLLINS DAUDA (BOAKYE-BOATENG – INTERESTED PARTY) [2009] SCGLR 447**
6. **NEW PATRIOTIC PARTY v NATIONAL DEMOCRATIC CONGRESS AND OTHERS [1999-2000] 2 GLR 506 SC**
7. **ECOBANK NIGERIA PLC v HISS HANDS HOUSING AGENCY AND ANOTHER [2017-2018] 1 SCLRG 355**
8. **MARTIN v BARCLAYS BANK (GH.) LIMITED [2017-2018] 1 SCLRG 800**
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16. **OBENG AND OTHERS v ASSEMBLIES OF GOD CHURCH, GHANA [2010] SCGLR 300**
17. **ASIA v AYEDUVOR AND ANOTHER [1987-88] 1 GLR 175 CA**
18. **T.K. SERBEH & CO. LTD v MENSAH [2005-2006] SCGLR 341**
19. **GHANA CABLE COMPANY LIMITED v BARCLAYS BANK GHANA LIMITED [2010] SCGLR 108**
20. **GREGORY v TANDOHO IV & HANSON [2010] SCGLR 971**
21. **GHANA PORTS AND HARBOURS AUTHORITY v ISSOUFOU [1993-94] 1 GLR 24 SC**

**22. REPUBLIC v THE DISTRICT MAGISTRATE, PRESTEA; EX PARTE NKANI  
[1992] 2 GLR 385**

**23. ANKRAH v OFORI [1963] 2 GLR 405**

**24. QUAGRAINE v ADAMS [1981] GLR 599 CA**

**25. MENSAH v BERKOE [1975] 2 GLR 347**