

IN THE CIRCUIT COURT HELD AT AMASAMAN – ACCRA ON
WEDNESDAY THE 21ST DAY OF DECEMBER, 2022 BEFORE HER
HONOUR ENID MARFUL-SAU, CIRCUIT COURT JUDGE

SUIT NO. C1/47/2019

JOSEPH YAW SEKU OTENG

(SUING PER HIS LAWFUL ATTORNEY SAMUEL

OFFEI DODOO)

UNNUMBERED HOUSE, POKUASE RIDGE

NEAR AMASAMAN

...

PLAINTIFF

VS.

1. AHMED ABDUL RAZAK

2. NII GAMU OSUMANU TACKIE OKAI I

3. ABBASS QUARTEY

4. MUNIRO MORO

ALL OF DANCHIRA

...

DEFENDANTS

PARTIES: PLAINTIFF'S ATTORNEY PRESENT

1ST – 3RD DEFENDANTS ABSENT

4TH DEFENDANT ABSENT

COUNSEL: FRANK K. NIKOI ESQ. FOR PLAINTIFF PRESENT

KWESI FOKUOR-BENYIN ESQ. HOLDING BRIEF FOR KWAME GYAN ESQ.

FOR 1ST – 3RD DEFENDANTS PRESENT

RULING

This is an application by counsel for 1st to 3rd Defendants for an order of misjoinder of the 1st and 3rd Defendants (hereinafter referred to as Applicants) pursuant to Order 4 rule 5(2)(a) and 9(2) of the rules of court.

It is the case of Applicants that per paragraph 2 of the Amended Writ of Summons and Statement of Claim filed on 26th November, 2020, Plaintiff indicated that the 1st – 3rd Defendants are head and members of the Djan Bi Amu family of Danchira and purports to sue them in such capacity. According to Applicants, a reading of the entire pleadings shows that Plaintiff's cause of action is against the Djan Bi Amu family and not against any of the individuals personally. Applicant says that the 1st and 3rd Defendants being mere members of the family are not necessary parties to the suit. They state that it is the head of family who has the capacity to sue and be sued on behalf of the head of family and therefore to the extent that Plaintiff's pleadings do not disclose any personal liability against the 1st and 3rd Defendants, they are not proper parties to the suit and ought to be struck off as parties.

Plaintiff filed an affidavit in opposition. He contends that it is untrue that his only claim against the Applicants are against the family and not against them personally. He says that his claim against the Applicants stems from the fact that they graded his two stores which was at the foundation level and the Applicants also supervised the fencing of a portion of his land. He says that all his efforts to stop the Applicants were unsuccessful as they carried out the fencing with armed guards who provided protection for the workers. He says that he reported the Applicants to the Police, and they were arrested but they went ahead to complete the fencing and the 4th Defendant is working on the land. He contends that he has a claim of damaged against the Defendants.

As this Application is made pursuant to Order 4 rule 5(2)(a) and 9(2) of C.I. 47, I shall set out the provisions. Order 4 rule 5(2)(a) provides as follows:

"Rule 5—Misjoinder and Non-joinder of Parties

(2) At any stage of proceedings, the Court may on such terms as it thinks just either of its own motion or on application

(a) order any person who has been improperly or unnecessarily made a party or who for any reason is no longer a party or a necessary party to cease to be a party;"

Order 9 rule 2 also provides that:

"The residential and occupational address of the defendant shall be stated on the appearance whether the defendant defends in person or by a lawyer and whether this is stated on the writ or not."

Clearly, Order 9 rule 2 does not apply in the circumstances of this case. Now, are the 1st and 3rd Defendants necessary parties to this action? Plaintiff's Statement of Claim provide as follows:

"18. Plaintiff say when he stopped negotiating with the defendant's they threatened to sell the land and indeed carried through their threat.

19. Plaintiff say he later saw that the defendants had graded the land completely destroying the two (2) stores at the foundation level and were supervising the fencing of a portion of his land of about 4 plots of 100 by 70 feet each.

20. Plaintiff say all efforts to stop defendants was not successful since defendants carried out the fencing works with heavily armed land guards providing protection for the workers.

21. Plaintiff say he reported defendants to the Police who caused their arrest despite that defendants went ahead to complete the fencing. The 4th Defendant is busily working on the land.

22. Plaintiff say if the court does not intervene, defendants will continue with their trespassory activities."

From the foregoing paragraphs, I am unable to agree with counsel for Applicant that his cause of action is against the Djan Bi Amu family alone. I consider from the paragraphs that Plaintiff makes allegations of destruction

and trespass against the Defendants and not the family of the Defendants. Indeed, one of the issues set down for trial is:

“Whether or not defendants destroyed plaintiff’s foundation and had fenced a portion of his land”

The 1st and 3rd Defendants are therefore necessary parties to the action. On this basis, the application is refused.

SGD

H/H ENID MARFUL-SAU

CIRCUIT JUDGE

AMASAMAN