

IN THE CIRCUIT COURT OF GHANA HELD IN ACCRA AT CIRCUIT COURT '2' ON THURSDAY, 3RD AUGUST, 2023 BEFORE HIS HONOUR ISAAC ADDO

SUIT NO. C2/236/2023

DANIEL BRIGHT YAW AGBALE

PLAINTIFF/RESPONDENT

VRS

1. REGENT UNIVERSITY COLLEGE

1ST DEFENDANT

OF SCIENCE & TECHNOLOGY

2. NANA YAW BOADI APPIAH

2ND DEFENDANT/APPLICANT

PLAINTFF PRESENT

1ST DEFENDANT REPRESENTED BY SAMUEL AYEY BAMPOE

2ND DEFENDANT ABSENT

ISAAC OSEI-OWUSU, ESQ. FOR THE DEFENDANTS/APPLICANTS ABSENT

GEORGE OWUSU SARPONG, ESQ. FOR THE PLAINTIFF/RESPONDENT ABSENT

RULING ON MOTION ON NOTICE TO UNSUIT THE 2ND DEFENDANT (ORDER 4 RULE 5(2) OF CI 47)

The Plaintiff (hereinafter called the Respondent) commenced this action by a Writ of Summons issued at the Registry of this Court seeking the following reliefs jointly and severally:

1. An order compelling the Defendants to pay the Plaintiff an amount of USD\$1,600 or its Cedi equivalent being allowance of Books and Equipment due the Plaintiff for 2021 and 2022 academic years.

2. An order directed at the Defendants to pay the Plaintiff an amount of GH¢6,480.00 being allowances for extra hours of teaching.
3. An order directed at the Defendants to pay the Plaintiff an amount of GH¢22,800.00 as allowance for extra duties as Legal Assistance.
4. An order directed at the Defendants to pay the Plaintiff GH¢32,954.00 in lieu of leave accrued to the Plaintiff.
5. Damages for constructive termination of Plaintiff employment.
6. Cost including legal fees.

This instant ruling is in respect of a Motion on Notice to unsuit the 2nd Defendant in this case. The gravamen of the Applicant's motion is captured at paragraphs 7-10 of the Affidavit in Support of the motion. For the avoidance of doubt, I reproduce them below:

"7. That none of the reliefs sought by the Respondent is against the Applicant (2nd Defendant) herein.

8. I have been advised by Counsel and believe the same to be true that the Applicant is not a necessary party to the suit and its presence will not be relevant for the effective and complete determination of the issues.

9. I have further been advised that the 1st Defendant is a separate legal entity, which can sue and be sued and the presence of the 2nd Defendant is needless and unnecessary.

10. I have been advised and believe the same to be true that rules of the High Court allow that at any stage of proceedings, the Court may on such terms as it thinks just, either of its own motion or on application, order any person who has been improperly made a party or who is not a necessary party, cease to be a party."

The Applicant's counsel cited the cases of Salomon vrs Salomon (1897) AC 22 HL; Ago Sai & Others vrs Kpobi Tsuru [2010] SCGLR 762 @ 807; Morkor vrs Kuma [1998-99] SCGLR 620.

The Respondent vehemently opposed to the application and relied on all the depositions contained in the Affidavit in Opposition to the motion especially paragraphs 4, 5 and 6. I reproduce them as follow:

"4. That the Plaintiff denies paragraph 7 of the Affidavit in Support and says that the present suit was commenced by Plaintiff on 24th May, 2023 claiming against the Defendants jointly and severally the following reliefs:

- a. An order compelling the Defendants to pay the Plaintiff an amount of USD\$1,600 or its Cedi equivalent being allowance of Books and Equipment due the Plaintiff for 2021 and 2022 academic years.*
- b. An order directed at the Defendants to pay the Plaintiff an amount of GH¢6,480.00 being allowances for extra hours of teaching.*
- c. An order directed at the Defendants to pay the Plaintiff an amount of GH¢22,800.00 as allowance for extra duties as Legal Assistance.*
- d. An order directed at the Defendants to pay the Plaintiff GH¢32,954.00 in lieu of leave accrued to the Plaintiff.*
- e. Damages for constructive termination of Plaintiff employment.*
- f. Cost including legal fees.*

5. That the Plaintiff avers that not only is he claiming reliefs against the 2nd Defendant jointly with the 1st Defendant but he has also in paragraph 21 on his Statement of Claim reproduced a Whatsapp conversation of 8th February, 2023 with the Chairperson of the 1st Defendant's University Council that the actions of the 2nd Defendant were without the involvement of the Executive Council of the 2nd Defendant.

6. *The 2nd Defendant is a necessary party to the suit whose involvement as a party will help this honourable Court.*"

The Respondent's counsel cited the case of Professor E.O. Adekolu vrs University For Development Studies, Tamale & S. M. Kuuire, Civil Appeal No. J4/59/2013 19th March, 2014.

This application is grounded on Order 4 rule 5(2)(a) of the High Court (Civil Procedure) Rules, 2004 (CI 47) and it reads:

"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."

By its nature, a company has to work through human beings. So long as a company is working in furtherance of its business, it has all the powers of a natural person of full capacity. In the case of Morkor v Kuma [1998-99] SCGLR 620, the Chief Executive Officer and major shareholder signed a loan on behalf of the company. When there was default, both the company and the Chief Executive Officer were sued for the return of the money. Originally there was no contention as to whether the Chief Executive Officer was the proper person to be sued. At the Court of Appeal, this point was raised. This defence was upheld. The Supreme Court per Sophia Akuffo, JSC (as she then was) held that the defendant could not be sued. Unless there were factors to indicate she was personally liable, then she could not be held. Except in cases of fraud or avoidance of contractual obligations, the corporate veil will not be lifted.

The Professor Adekolu case is distinguishable from this instant case. In the Adekolu case, there were some specific reliefs against the 2nd Defendant. Let me reproduce the reliefs as endorsed on the Writ of Summons and as captured by this judgement:

1. Declaration that under the University Statute the decision to renew the Plaintiff's contract or not is a decision which can only be taken by the University Council and as such the 2nd Defendant's decision not to renew the Plaintiff's contract in the absence of the Council is null and void and of no effect.

2. A declaration that there was no University Council in existence at the time of 2nd Defendant's letter dated 13th March 2009 and therefore the 2nd Defendant's letter purporting to be "on behalf of the University Council" and terminating Plaintiff's contract is null and void and of no legal effect.

3. A declaration that the Plaintiff's contract as the Head of the Department of Community Medicine is due to end on 31st August 2009 and not 31st July 2009 as stated in the 2nd Defendant's letter dated 13th March 2009.

4. A declaration that Plaintiff continues to be a Professor of Medicine and Head of Department of the Department of Community Medicine until such time that the University Council takes a decision on the matter.

5. A declaration that the Plaintiff's appointment can only terminate in the month of September and after he has been given 1 year's notice under the statute and conditions of service.

6. Damages for wrongful termination of appointment.

7. The equivalent of 52 working days out of the 62 working days' leave entitlement of Plaintiff commuted to cash being leave which was due the Plaintiff but which he was denied by the 1st Defendant.

8. Declaration that under his contract of service Plaintiff was entitled to free accommodation and the rent demand by the Defendants on his residence, No. NV1, Norrip with retrospective effect from 2006 is null and void.

9. Damages in the sum of GH¢40,000 against the 2nd Defendant solely, for defamation for that on 1st June, 2009, the 2nd Defendant published libelous material against the Plaintiff to wit “You HAVE CARRIED YOUR INSANITY TOO FAR”... which material was circulated to the Acting Vice-Chancellor, Pro-Vice-Chancellor and Dean, SMHS which words have deeply injured the reputation of the Plaintiff as a Professor of Medicine and has ridiculed him in the eyes of right thinking men.” (Emphasis mine)

In this case, I have carefully perused the Writ of Summons accompanied with Statement of Claim. Apart from the Respondent suing the Defendants jointly and severally, the Court finds that there are no specific reliefs directed at the 2nd Defendant. The 1st Defendant University is a going concern and the Respondent can proceed against the 1st Defendant and the same reliefs will be covered in the event that the Respondent gets judgement in his favour. Assuming without admitting that the suit is between the Plaintiff and only the 2nd Defendant, what relief would the Plaintiff seek from the 2nd Defendant? There is no relief at all against the 2nd Defendant.

In the circumstances, I hold that this application has merit and same is hereby granted. Accordingly, the 2nd Defendant is unsuited in this case.

I award cost of GH¢2,000.00 against the Respondent.

.....
ISAAC ADDO
CIRCUIT JUDGE
3RD AUGUST, 2023

