

**IN THE CIRCUIT COURT WEIJA BEFORE HIS HONOUR JAMES KOJOH  
BOTAH SITTING ON THURSDAY THE 20<sup>TH</sup> DAY OF JULY, 2023**

**SUIT NO. C9/05/2022**

**1. MARFO BOAKYE-KUDJO ... PLAINTIFFS**

**2. ROSEMOND MARFO**

ALL OF ACCRA

**VRS**

**1. RICHMOND ADU-POKU ... DEFENDANTS**

**2. SAMPAUL CUDJOE**

ALL OF ACCRA

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**PARTIES:** Plaintiffs Present

Defendant Absent

**COUNSEL:** Prince Boateng Gjan for Baffour Gyawu Bonsu Ashia for  
Defendants -Present

Richard Asare Baffour for Plaintiffs - Absent

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**RULING**

The Plaintiff Writ of Summons and Statement of Claim was filed on 21<sup>st</sup> April, 2022.

On 6<sup>th</sup> July, 2022 the court granted Plaintiffs application to serve the process on the

Defendants through Substituted Service for a period of 10 days. An affidavit of

posting dated 11th October, 2022 showed that the order for Substituted Service, Writ

of Summons and Statement of Claim were posted at the places indicated by the

Plaintiffs in their application for substituted service. It is pertinent to note that it took three (3) months for the processes to be posted.

I find from the case docket that Sory @Law representing the 1<sup>st</sup> Defendant wrote an undated letter to the Registrar requesting for a certified true copy of the Plaintiffs Writ of Summons and Statement of Claim. The impression I get from the letter is that as at the time Sory@Law applied for a certified true copy of the Writ of Summons and Statement of Claim, the processes had not been brought to their attention. It appears the Registrar furnished them with the processes required because on 12<sup>th</sup> August, 2022 they filed an Entry of Conditional Appearance on behalf of the 1<sup>st</sup> Defendant. There is however, no proof of direct service on the docket of the certified true copy of the Writ of Summons and Statement of Claim on Sory @Law. Counsel for Plaintiff was served with the 1<sup>st</sup> Defendant's Entry of Conditional Appearance on 31<sup>st</sup> August, 2022. As of today the 2<sup>nd</sup> Defendant has filed no process.

In **A Practical Guide to Civil Procedure in Ghana** (2017) page 45 Samuel Marfu-Sau JSC of Blessed Memory stated that a conditional Appearance shall be filed for the following purposes:

1. *To set aside a Writ of Summons or Service of the Writ of Summons or Notice of the Writ of Summons;*
2. *To declare that the writ or notice of the writ has not been served on the Defendant and*
3. *To discharge any order that gives leave to serve notice of the writ of summons on the Defendant outside the jurisdiction.*

Under Section Order 9 rule 8 of C. I. 47 where the Defendant files a conditional appearance, he must apply within 14 days to set aside the Writ of Summons or service of the Writ of Summons or notice of the Writ of summons or discharge an order granting leave to the Plaintiff to serve notice of the Writ of summons out of the jurisdiction. Under Order 9 rule 7(2) of C.I. 47 a conditional appearance shall be treated as an unconditional appearance or a bare appearance where the Defendant fails to apply to the court within 14 days for an order under Order 9 rule 8 of C. I. 47. The 1<sup>st</sup> Defendant's conditional appearance filed on 12<sup>th</sup> August, 2022 is a competent process. However, the 1<sup>st</sup> Defendant took no further step in the action within the 14 days period required by the rules, thus rendering his conditional appearance a bare entry of appearance. At the end of the 14 days from 12<sup>th</sup> August, 2022 the 1<sup>st</sup> Defendant should have proceeded to file a Statement of Defence but he failed to do so. Where the Defendant has entered appearance but fails to file a Statement of Defence within the prescribed time, the Plaintiff may apply for judgment in default of defence under Order 13 of C. I. 47. I find on the docket that after ascertaining through a search filed on 5<sup>th</sup> April, 2023 whether the Defendants have been served with the Writ of Summons and whether they have filed an appearance, the Plaintiff after obtaining positive responses proceeded to file an application for judgment in default of defence on 21<sup>st</sup> April, 2023.

To enable us make progress in the case, I hereby direct as follows:

- 1. The Plaintiff is to withdraw the application for judgment in default of appearance against the two Defendants filed on 5<sup>th</sup> June, 2023, since per the ruling the 1<sup>st</sup> Defendant has filed an appearance.*
- 2. The Plaintiff is at liberty to file an application for judgment in default of appearance only against the 2<sup>nd</sup> defendant who has filed no process though served the writ of summons and Statement of Claim through substituted service.*
- 3. The Plaintiff is at liberty to move his application for judgment in default of defence against the 1<sup>st</sup> Defendant filed on 21<sup>st</sup> April, 2023. However, if the 1<sup>st</sup> Defendant is*

*desirous to file a defence, the Plaintiff may withdraw the application and then take costs against the 1<sup>st</sup> Defendant.*

**H/H JAMES KOJOH BOTAH  
CIRCUIT COURT JUDGE**