

CORAM: HER HONOUR BERTHA ANIAGYEI (MS) SITTING  
AT THE CIRCUIT COURT 'B' OF GHANA HELD AT TEMA  
ON THE WEDNESDAY, 25<sup>TH</sup> DAY OF JANUARY, 2023

SUIT NO. C11/40/23

**YAA NTIRIWAA ADJEI - PLAINTIFF**

**VRS**

**1. TOYOTA GHANA COMPANY LTD**

**2. DAVID FRIMPONG MANSO**

} **DEFENDANTS**

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**RULING**

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On the 19<sup>th</sup> day of October, 2022 at 10:05 am, the plaintiff commenced an action against the defendants by issuing out a writ of summons with an accompanying statement of claim. The reliefs as endorsed on her writ of summons and statement of claim are for:

- a) A declaration that the termination of employment of the Plaintiff by the 1<sup>st</sup> defendant through a letter signed by the 2<sup>nd</sup> defendant is wrongful and unlawful
- b) An order directed at the 1<sup>st</sup> defendant to pay to the Plaintiff her gross salary from the date of unlawful termination of her employment i.e 1<sup>st</sup> July, 2022 to the date of final judgment.
- c) Interest at the prevailing commercial rate on (b) from the date of judgment to date of final payment

- d) An order directed at the 1<sup>st</sup> defendant to pay to the Plaintiff her entitlement of severance award including earnings for the unexpired period of the contract term of her employment
- e) General damages of one hundred thousand Ghana cedis (Ghs 100,000) for defamation
- f) General damages for wrongful termination of employment
- g) Special damages for loss of income/wages
- h) An order directed at the defendant to render an unqualified apology to the plaintiff in writing for the humiliation suffered
- i) Costs including legal fees.

The defendants were served with the writ of summons and statement of claim on the 7<sup>th</sup> of November, 2022 and they entered appearance on the 14<sup>th</sup> day of November, 2022. On the 29<sup>th</sup> day of November, 2022, the defendants filed a motion on notice for an order to strike out paragraph 5-18 of the plaintiff's statement of claim and also for the suit to be dismissed on the grounds that it discloses no reasonable cause of action.

The plaintiff/respondent opposed same.

#### CONSIDERATION BY COURT

One of the summary powers conferred on the courts by which a case can be determined without going through a trial is *Order 11 rule 18 (1) (a) of the High Court Civil Procedure Rules, 2004. (C.I.47)*

Rule 18- Striking Out Pleadings:

(1) The court may at any stage of the proceedings order any pleading or anything in any pleading to be struck out on the grounds that

(a) It discloses no reasonable cause of action or defence.

An application under this rule is premised only by a motion without the need for an affidavit in support. The court has a duty in the exercise of this summary power, to decide the matter based solely on the averments contained in the pleadings and not on affidavit evidence. See the case of *Ghana Muslims Representative Council vrs. Salifu* [1975] 2 GLR 246.

As a matter of course, such powers of the Court must be exercised after a weighty and considered opinion of the pleadings and without the slightest tilt towards driving a party away from the seat of judgment and/or justice.

*Halsbury's Laws of England, 4<sup>th</sup> edition, Volume 37 at page 318, paragraph 430 provides thus:*

*"However, the powers are permissive, not mandatory, and they confer a jurisdiction which the court will exercise in the light of all the circumstances concerning the offending pleading. The discretion is exercised by applying two fundamental, although complimentary principles. The first principle is that the parties will not lightly "be driven from the seat of judgment", and for this reason the court will exercise its discretionary power with the greatest care and circumspection, and only in the clearest cases. The second principle is that a stay or even dismissal of proceedings may "often be required by the very essence of justice to be done" so as to prevent parties being harassed and put to expense by frivolous, vexatious or hopeless litigation."*

The defendants have applied to this court for an order striking out paragraphs 5 through to 18 of the plaintiff's statement of claim and also dismissing the entire writ of summons on the basis that it discloses no reasonable cause of action.

Learned counsel for the defendants/applicants in moving the motion, has submitted that the pleadings do not support the claim of the plaintiff and neither do they disclose any reasonable cause of action. Further that on the face of the pleadings, the plaintiff's case is uncontestably bad. She prayed the court to strike out the offending pleadings and dismiss the writ of summons and accompanying statement of claim.

Learned counsel for the respondent in strongly opposing the motion submitted that same is not in compliance with the rules. That it is misconceived and has no merit whatsoever. He urged the court to strike out the application.

To begin with, under the Rules of Court, a party who applies to dismiss an action on the grounds that the pleading discloses no reasonable cause of action is deemed to admit the truth of the averments contained in the statement of claim. *See the case of Ghana Muslim Representative Council v Salifu (Supra)*.

Per plaintiff's writ of summons and statement of claim, this is a mixed claim for wrongful and unlawful termination and also for defamation. It is a legal known that the employer/employee relationship is a contractual one and in order for the court to be able to arrive at a determination that a termination is wrongful and/or unlawful, the party must plead in a summary form, the material facts of the contract and show on the face of her pleadings that same has been breached by the employer in a wrongful and unlawful manner.

In sum, the plaintiff must plead material facts of her terms of employment for which the termination by the defendants was in breach of or contend that this termination was in breach of a statutory provision for the time being regulating her employment. See the case of *Oduro vrs. Graphic Communications Group Ltd [2017-2018] SCGLR 112*.

This is absent in the plaintiff's statement of claim. Save for paragraph 15 of the statement of claim which avers that the 1<sup>st</sup> defendant has refused to compensate her for her invaluable services rendered since March, 2019, there is even no specific pleading as to when her contract of employment with the 1<sup>st</sup> defendant began.

Again, plaintiff's relief (d) is for an order directed at the 1<sup>st</sup> defendant to pay to the Plaintiff her entitlement of severance award including earnings for the unexpired period of the contract term of her employment.

The question then is, from her pleadings, what is the unexpired period of the said contract of employment? None of the 18 paragraphs of her statement of claim makes any contention or averment as to the terms by way of duration of the contract of employment between her and the 1<sup>st</sup> defendant.

A contract of employment must contain material facts including but not limited to the date of employment, the terms and conditions of employment particularly salary, allowances, etc. the means by which either party may bring the contract to an end i.e termination, whether is it governed by a collective bargaining agreement amongst others. The statement of claim before me is silent on any of these.

Was this a contractual employment for a specific term, what was the monthly salary, what was the agreed means of terminating the contract, was notice to be given by one party to the other, if so how many days, weeks or months notice? What exactly were the terms of the contract which the defendant can be held to have breached?

Further, plaintiff in her relief (f) prays for special damages for loss of income/wages. These special damages, contrary to the rules of court, practice and procedure are not particularized. The rules require that special damages be pleaded and particularized in order to indicate the nature and extent of the said damages.

With regard to the claim of defamation, the plaintiff per paragraph per paragraph 7 and 8 of her statement of claim says the manner in which the 2<sup>nd</sup> defendant in rambo style marched her to her seat and ordered her to immediately leave the office premises is defamatory. That this act in its ordinary sense and innuendo was to the effect that she might have committed a criminal act. Her paragraphs 9,10,11,12,13 and 14 are relate to the claim of defamation.

Defamation is a tortuous action. It is defined as "the publication of a statement which reflects on a person's reputation and tends to lower him in the estimation of right thinking members of society generally or tends to make them shun him or avoid him". See *Winfield and Jolowicz on Torts, 13<sup>th</sup> edition, 1989 at page 294.*

In the case of *Owusu- Domena v. Amoah [2015-2016] 1 SCGLR 790, Benin JSC* with approval, quoted and relied on the definition of defamation as contained in the *4<sup>th</sup> edition of Halsbury's Laws of England, vol 28 at page 7. Pararaph 10* which defines defamation as:

*“a defamatory statement is a statement which tends to lower a person in the estimation of right thinking members of society generally or to cause him to be shunned or avoided or to expose him to hatred, contempt or ridicule, or to convey an imputation on him disparaging or injurious to him in his office, profession, calling or trade”.*

I have quoted these definitions for the simple reason that they all require that in an action for defamation, there must first be a statement and secondly that same must be published. Defamation unlike slander requires that some form of communication or statement be published.

These may be in the form of uttered words which are then published, it may be in a form of an effigy or a cartoon-like description of the person or image of the claimant which is published in such a manner as to convey a particular statement to anyone who comes across it, or it may even be in the form of an innuendo.

The plaintiff per her statement of claim does not indicate that the defendants particularly the 2<sup>nd</sup> defendant even made a statement to begin with. Neither does she aver that an effigy, cartoon or any form of innuendo was made at her person or personality.

Her particulars of defamation as provided in paragraph 10 of her statement of claim are that the act of 2<sup>nd</sup> defendant in paragraph 7 which is to march her out of the office after handing her a letter indicating that her employment has been terminated shows that she has committed an offence, that she is a criminal and that she is a misfit.

These are her own interpretations of 2<sup>nd</sup> defendant's actions rather than any thing the 2<sup>nd</sup> defendant published about her. That being the case, if she is able to lead evidence

based on her pleadings from which it is trite that she cannot depart from, she would still not be entitled to judgment on the grounds of defamation.

Although pleadings do not constitute evidence, it must disclose a summary of the material facts on which the party would lead evidence in the course of the trial. See *Order 11 rule (7) of C.I. 47*. The case of *Bruce v. Oddhams Press Ltd [1936] 1 KB 712* provides that “material facts are facts necessary for the purpose of formulating a complete cause of action”. A Statement of claim must also disclose an accrued cause of action in every plaintiff and liability in every named defendant. See the case of *Morkor v. Kumah [1998-99] SCGLR 620*, and page 58 of the book ‘A practical guide to Civil Procedure in Ghana’ by Samuel Marful Sau.

To quote extensively from the decision of the Supreme Court which was eruditely delivered by *Akoto Bamfo JSC in the case of Klah Vrs Phoenic Insurance [2012] GHASC 25 (delivered on 30th May 2012)*;

*“The Plaintiff is required to formulate the factual grounds upon which he bases his claim or relief and thus define his cause of the action against the defendant.*

*.....In Hammond v Odoi 1982-83 GLR 1215 at 1235, Crabbe JSC pronounced on the functions of pleadings thus:*

*“Pleadings are the nucleus around which the case- the whole case-revolves. Their very nature and character thus demonstrate their importance in actions, as for the benefit of the court as well as for the parties. A trial judge can only consider the evidence of the parties in the light of their pleadings. The pleadings form the basis of the respective case of each of the contestants. The pleadings bind and circumscribe the parties and place fetters on the evidence that they would*



*lead. Amendment is the course to free them from such fetters. The pleadings thus manifest the true and substantive merits of the case."*

With regard to the relief of wrongful and unlawful termination of contract, the relevant paragraphs of the statement of claim are paragraphs 5, 6, 15,16,17,and 18. I find that those pleadings do not disclose any reasonable cause of action against the 1<sup>st</sup> defendant. The same applies to the pleadings on defamation i.e paragraphs 7,8,9,10,11,12,13 and 14.

"It is fundamental in litigation that parties must commence action against relevant parties to the suit. To institute an action against a party, one must have a cause of action against the defendant" See the dictum of Baffoe Bonnie JSC in the case of *Ampratwum Manufacturing Company Ltd v. D.I.C [2009] SCGLR 692*.

Lord Diplock in the age old case of *Letang v. Cooper [1965] 1 Q.B 232* provides a definition of cause of action to be "simply a factual situation the existence of which entitles one person to obtain from the court a remedy against another person"

I find that the relevant pleadings as to the claim of wrongful and unlawful termination of plaintiff's contract of employment and defamation which the defendants by filing this motion are deemed to admit, do not disclose any reasonable cause of action against the defendants. Its admission by the defendants would not entitle the plaintiff to the reliefs which she seeks from this Court.

It falls within the second ambit of the principle as enunciated by *Halsbury's Laws of England (supra)* which is " The second principle is that a stay or even dismissal of proceedings may "often be required by the very essence of justice to be done so as to prevent parties being harassed and put to expense by frivolous, vexatious or hopeless litigation."

From the statement of claim, this is not a weak case, it is a “hopeless litigation” and the very essence of justice requires that I prevent both sides from being put to expense and the defendants from being harassed and put to a hopeless litigation. Accordingly, I hereby strike out the said pleadings.

Those pleadings being the gravamen of plaintiff’s case, striking same out and leaving paragraphs 1,2,3 and 4 to stand would be of no benefit to the plaintiff. I consequently accede to the prayer by counsel for the defendants, to dismiss the suit. The writ of summons and statement of claim is consequently dismissed.

There would be no order as to costs.

**H/H BERTHA ANIAGYEI (MS)  
(CIRCUIT COURT JUDGE)**

RUTH ESSILFIE NTENAH (MRS) FOR THE DEFENDANT/APPLICANT

MOSES ANSAH BARNOR ANKRAH FOR THE PLAINTIFF/RESPONDENT