

IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT OF JUSTICE,
COMMERCIAL DIVISION, HELD IN ACCRA ON TUESDAY, THE 24TH DAY OF
OCTOBER, 2023 BEFORE HIS LORDSHIP FRANCIS OBIRI 'J'.

SUIT NO. CM/BFS/0203/2023

GHANA EDUCATION TRUST FUND - PLAINTIFF/APPLICANT

Vs

SIC FINANCIAL SERVICES LTD - DEFENDANT/RESPONDENT

JUDGMENT

I have listened to the submissions for and against the motion filed on 18th May, 2023 for leave to enter Summary Judgment in favour of the Plaintiff/Applicant (hereinafter called the Applicant) against the Defendant/Respondent (hereinafter called the Respondent). I have gone through the documents filed in support and in opposition to the application.

The purpose of summary judgment under Order 14 of C.I. 47 is to allow a plaintiff to obtain judgment summarily without necessarily going through trial in a situation where the Defendant is not able to set up any bonafide defence.

Generally, in summary judgment, the Plaintiff's claim should be clear on the face of it. The Defendant should have been served with the Plaintiff's writ, entered appearance and filed a defence. Also, the Plaintiff claim should be clear and unimpeachable.

See: YARTEL BOAT BUILDING CO V. ANNAN [1991] 2 GLR 11

ATLANTA TIMBER CO V. VICTORIA TIMBER CO. LTD [1962] 1 GLR 221

SANUNU V SALIFU [2009] SCGLR 586

Therefore, in a situation where the Defendant is not able to set up a good defence or any defence at all, then the Court may grant summary judgment. The trial court will come to this conclusion by examining the Respondent or the Defendant defence or pleadings to determine whether there are triable issues for determination or not.

See: BALLAST NEDAM GHANA BV. v HORIZON MARINE CONSTRUCTION LTD [2010] SCGLR 435

SADHWANI v AL-HASSAN [1999-2000] 1GLR 19 CA

DUNCAN v KAWOACO LTD [1981] GLR 476

Consequently, a court will not grant summary judgment if the Defendant defence discloses triable issues.

See: YIRENKYI v TORMEKPEY [1987-88] 1 GLR 533 CA

MUSTAPHA V NATIONAL INVESTMENT BANK LTD [2005-2006] SCGLR 1037

However, what will amount to triable issue(s) will depend on the pleadings and the circumstances of each case.

The law is settled, that summary judgment is a judgment on the merits even though it is obtained by a formal motion without a plenary trial. It is a judgment granted on a simple ground that the Respondent to the application has no defence to the action or part thereof or any reasonable defence to be allowed to contest the case on the merits to waste time and expense.

See: ASAMOAH v MARFO [2011] 2 SCGLR 832

REPUBLIC v HIGH COURT (COMMERCIAL DIVISION), ACCRA EX PARTE PORT HANDLING CO. LTD [2014] 69 GMJ 1 SC

In the case of **AXES CO. LTD v OPOKU [2013] 53 GMJ 57**, the Supreme Court held that **“The judge before whom an application is made is entitled under rule 5(1) of Order 14 to give such judgment to a Plaintiff on the claim partly or wholly as may be just having regard to the remedy or relief sought, except the Defendant shows that there is an issue to be tried or for some other reason, there ought to be a trial”**.

Summary judgment should however be granted with care. This means, a Defendant should not be shut out from defending the case unless it is very clear that he has no defence to the action. This is because, it is often said that the path to the shrine of justice should be wide open so that people can run there to seek refuge.

The law is also settled that when issues for trial have been set down, the court should not terminate the case without evidence being taken. Therefore, the court should not terminate the case summarily.

See: **GBENARTEY & GLIE v NETAS PROPERTIES & INVESTMENT & ORS [2015-2016] 1 SCGLR 605**

In the case of **KUMA v BART-PLANGE [1989-90] 1 GLR 119**, Kpegah J (as he then was) explained the rationale behind summary judgment as follows: **“The third situation is where a Plaintiff can proceed and obtain judgment without an actual trial is for summary judgment. The procedure is intended only to apply to cases where there is no reasonable doubt that the plaintiff is entitled to judgment and where therefore it is expedient to defend for mere purposes of delay. Before one can employ the summary procedure, certain preliminary requirements have to be satisfied; namely the**

defendant must have entered appearance. The statement of claim must be or have been served on the defendant. The affidavit in support of the application must verify the facts and contain statements of the deponent belief that there is no defence to the claim”

In this case, the Applicant averred in paragraph 6 of its Statement of Claim that as at 2018, it had with the Respondent an amount of GH¢10,997,262.72 being its principal investment and the interest accrued thereon.

The Applicant stated further in paragraph 10 of its Statement of Claim that the Respondent paid GH¢1,000,000.00 on 6th December, 2018 as part payment of its matured investment. The Respondent admitted these assertions by the Applicant in paragraph 4 of its Statement of Defence filed on 25th April, 2023.

Again, the Applicant attached as exhibit ‘E’ a letter from the Respondent. It is dated 12th August, 2021. It was signed by the Managing Director and the head of the Asset Management of the Respondent’s company. The Respondent’s letter admitted that it is indebted to the Applicant to the tune of over GH¢11,000,000.00.

There is no indication that the letter was obtained by recourse to fraud or misrepresentation or duress etc. This means, the Respondent is estopped by its conduct to deny the admission of its debt to the Applicant in the letter dated 12th August, 2021. This is conclusive estoppel under section 26 NRCD 323.

Section 26 of NRCD 323 provides 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.”

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

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

GHANA CABLE CO. LTD v BARCLAYS BANK (GHANA) LTD. [2010] SCGLR 108

GREGORY v TANDOHO IV & HANSON [2010] SCGLR 971

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

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

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

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

Again, in the case of *IN RE ASERE STOOL; NIKOI OLAI AMONTIA IV (SUBSTITUTED BY TAFO AMON II) v AKOTIA OWORSIKA III (SUBSTITUTED BY) LARYEA AYIKU III* [2005-2006] SCGLR 637 “Where the adversary of a party has admitted a fact advantageous to the cause of that part, what better evidence does the party need to establish that fact, than by relying on the admission of his opponent. This is estoppel by conduct. It is a rule whereby a party is precluded from denying the existence of some state of facts which he had formerly asserted”.

See also, *ADAMS ADDY & ANOTHER v SOLOMON MINTAH ACKAAH* [2021] 172 GMJ 363 SC

It is the law, that once there is such an unequivocal admission before a court in respect of a claim or part thereof, as in this case which has not been withdrawn, there cannot in principle be any objection to a decision based on such tacit admission.

See: OPOKU & OTHERS (NO. 2) v AXES COMPANY LIMITED (NO. 2) [2012] 2 SCGLR 1214

I am therefore of the view, that the court is bound by the above ratio in the **Opoku & Others v Axes Company Ltd.** case (**Supra**) per the principle of stare decisis.

In this case, counsel for the Respondent has stated in court that his client has paid over GH¢3,000,000.00 to the Applicant out of its investment with it.

From the evidence before the court, and the above rendition, I think it will be just and fair to grant the application in part and same is accordingly granted.

The Applicant is to recover from the Respondent cash, an amount of GH¢6,000,000.00. The Applicant is awarded interest of 20% on the GH¢6,000,000.00 from January 2019 until the date of final payment. I also award the Applicant cost of GH¢8,000.00 against the Respondent.

The difference between the Applicant's claim and the Summary Judgment figure which is about GH¢5,000,000.00 will be contested on its merits. I order accordingly.

SGD.

FRANCIS OBIRI

(JUSTICE OF THE HIGH COURT)

COUNSEL

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AWUAH FOR THE PLAINTIFF/APPLICANT**

**PRINCE ELI FORNYIKPOR WITH YVETTE ABIGAIL ENGILE FOR THE
DEFENDANT/RESPONDENT**

AUTHORITIES

1. **YARTEL BOAT BUILDING CO V. ANNAN [1991] 2 GLR 11**
2. **ATLANTA TIMBER CO V. VICTORIA TIMBER CO. LTD [1962] 1 GLR 221**
3. **SANUNU V SALIFU [2009] SCGLR 586**
4. **BALLAST NEDAM GHANA BV. v HORIZON MARINE CONSTRUCTION
LTD [2010] SCGLR 435**
5. **SADHWANI v AL-HASSAN [1999-2000] 1GLR 19 CA**
6. **DUNCAN v KAWOACO LTD [1981] GLR 476**
7. **YIRENKYI v TORMEKPEY [1987-88] 1 GLR 533 CA**
8. **MUSTAPHA V NATIONAL INVESTMENT BANK LTD [2005-2006] SCGLR
1037**
9. **ASAMOAH v MARFO [2011] 2 SCGLR 832**
10. **REPUBLIC v HIGH COURT (COMMERCIAL DIVISION), ACCRA EX PARTE
PORT HANDLING CO. LTD [2014] 69 GMJ 1 SC**
11. **AXES CO. LTD v OPOKU [2013] 53 GMJ 57 SC**
12. **GBENARTEY & GLIE v NETAS PROPERTIES & INVESTMENT & ORS [2015-
2016] 1 SCGLR 605**

13. AFRIKANIA MISSION CHURCH v SEBA CONSTRUCTION LIMITED [2013] 59 GMJ 176 CA
14. AGO SAI & OTHERS v KPOBI TETTEH TSURU III [2010] SCGLR 762
15. GHANA CABLE CO. LTD v BARCLAYS BANK (GHANA) LTD. [2010] SCGLR 108
16. GREGORY v TANDOHO IV & HANSON [2010] SCGLR 971
17. ASIA v AYEDUVOR AND ANOTHER [1987-88] 1 GLR 175 CA
18. OBENG AND OTHERS v ASSEMBLIES OF GOD CHURCH, GHANA [2010] SCGLR 300
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21. IN RE ASERE STOOL; NIKOI OLAI AMONTIA IV (SUBSTITUTED BY TAFO AMON II) v AKOTIA OWORSIKA III (SUBSTITUTED BY) LARYEA AYIKU III [2005-2006] SCGLR 637
22. ADAMS ADDY & ANOTHER v SOLOMON MINTAH ACKAAH [2021] 172 GMJ 363 SC
23. OPOKU & OTHERS (NO. 2) v AXES COMPANY LIMITED (NO. 2) [2012] 2 SCGLR 1214