

IN THE DISTRICT COURT, LA, TRADE FAIR-ACCRA, HELD ON THE 21ST DAY OF MARCH, 2023, BEFORE HIS HONOUR JOJO AMOAH HAGAN SITTING AS AN ADDITIONAL MAGISTRATE

SUIT NO. A2/07/2023

BETWEEN

WO1 SAMUEL KOJO ANTWI.....PLAINTIFF/RESPONDENT
BURMA CAMP, ACCRA.

AND

JAMES TAWIAH NKRUMA.....DEFENDANT/APPLICANT
COMMUNITY 3, TEMA.

RULING

1. The Defendant/Applicant [the Applicant] by a motion on notice filed on 17 February 2023 seeks to join the Chief of Defence Staff (CDS) to the suit as a defendant to his counterclaim. The basis of that application from the affidavit in support is that the Plaintiff/Respondent [Respondent] is a military officer who did some

wrongful acts to the Applicant with the assistance of officers from the National Security Secretariat in his capacity as an officer of the Ghana Armed Forces. Therefore, the Ghana Armed Forces headed by the CDS is vicariously liable for those wrong acts.

2. The Respondent opposed the application by an affidavit in opposition filed on 22 February 2023 wherein he averred that the suit before the Court was a personal matter between the parties and therefore did not warrant a joinder of the CDS given that a joinder application only ought to be granted if it would ensure that all the matters in controversy would be effectually and completely determined and adjudicated upon.

3. At the hearing of the application counsel for the Applicant argued that the CDS who was the head of the Ghana Armed Forces ought to be held variously liable because the Respondent organised security men from the National Security Secretariat to the residence of the Applicant to torture and arrest him and took him to the Secretariat to detain him because the Respondent was a soldier who used his position as a soldier to perpetrate the impugned acts. Counsel argued that considering that the impugned acts were not sanctioned by the

Ghana Armed Forces, neither the Ghana Armed Forces nor the Attorney-General could be sued. According to counsel, the conduct complained of was done by the Respondent in his personal capacity under the colour of the Ghana Armed Forces and therefore the Ghana Armed Forces ought to be held variously liable.

4. In his submissions counsel for the Respondent relying on

Appenteng v the Bank of West Africa Ltd [1961] 1 GLR 81 and *Sam (No.1) v Attorney-General [2000] SCGLR 102* submitted that the CDS was not a necessary party to the suit because for vicarious liability to stand it was trite learning that the party whose tort had given rise to the vicarious liability must be acting in the course of his employment. Nothing before the Court, according to counsel, indicates that the Respondent was acting in the course of his employment in the transaction that gave rise to the suit. He submitted further that consistently, counsel for the Applicant made references to the fact that the Applicant was acting personally. Therefore, if the head of the Ghana Armed Forces was to be hauled before the court as a party to suits involving every soldier then he would not be able to perform his statutory duties.

5. In my opinion, the Applicant and his counsel by their application and submissions before the Court seem to have misapprehended the concept of vicarious liability. Indeed counsel's argument contradicts itself in a material particular. In one breath he argued that the Ghana Armed Forces could not be joined because the Respondent acted in his personal capacity and in another he argued that the CDS ought to be joined because the Respondent acted under the colour of the Ghana Armed Forces without their authority. It has long been settled that the heads of institutions cannot be held vicariously liable for the wrongs of their subordinates unless such superiors authorised the wrongs. In *Dombo and Anor v Narh* C.A. digested in the [1970] CC 68 the Court of Appeal held that

"[a]ll servants of the Government are follow-servants and do not stand to each other in the relationship of master and servant. Thus, a Minister of the Government or head of a Government department, or other superior officials of the department are not liable for the wrongs committed by subordinate officials, unless it can be shown that the act complained of has been authorized by, or is substantially the act of, the Minister or of the head or senior official himself."

6. When a wrong is done by an officer of the State in the course of his employment, the State is held vicariously liable. The State is equally held vicariously liable where the officer has been expressly or apparently authorised to engage in the activity that gave rise to the wrong: see *Ewudziwa v Attorney-General* [1982-83] GLR 625; and *Attorney-General v Dadey* [1971] 1 GLR 228.

7. I have cursorily examined the pleadings of the parties, especially the pleadings of the Applicant and have found no averments suggesting that the Ghana Armed Forces or the CDS authorised the Respondent to transact with the Applicant neither are there any averments demonstrating amply that the Respondent allegedly engaged in the impugned conduct in the course of his official duties except an innocuous averment in paragraph 20 of the Statement of Defendant and Counterclaim wherein the Applicant alleged that the Respondent acted under the shield of the Ghana Armed Forces. There are not enough averments to assist me appreciate how the Respondent acted under the shield of the Ghana Armed to enable me infer apparent authority except the ample averments on record to the effect that the Respondent allegedly used officers of the National Security Secretariat to commit the alleged wrongs. A fortiori, counsel for the Applicant admitted that the Respondent was on a personal frolic and assuming

he was acting in the course of his employment, it would be wrong to presume to join the CDS instead of the Attorney-General considering that the Ghana Armed Forces in a constitutional body subject to the directions of the President who is the executive and whose principal legal adviser is the Attorney-General through whom all suits are initiated or defended except for independent constitutional bodies who may sue and be sued directly: see clause (1) of article 57, clause (1) of article 58 and article 88 of the 1992 Constitution, paragraph (a) of subsection (1) of section 3 and subsection (2) of section 7 of the State Proceedings Act, 1998 (Act 555) and *Amegatcher v Attorney-General (No.1) & Ors* [2012] 1 SCGLR 679.

8. Accordingly, I find that the CDS is not a necessary party to the suit. That being the case the motion for joinder of the CDS is frivolous and vexatious and is accordingly dismissed.

SGD
JOJO AMOAH HAGAN
CIRCUIT COURT JUDGE

LEGAL REPRESENTATION

Daniel Mensah Gorman Esq with Eyram Makafui Bequi for the Plaintiff/Respondent.
Gad Mortey Esq for the Defendant/Applicant