

**IN THE HIGH COURT OF JUSTICE, GHANA LAND DIVISION (COURT 11),
LAW COURT COMPLEX HELD IN ACCRA ON THURSDAY, THE 27TH DAY OF
JULY, 2023 BEFORE HIS LORDSHIP JUSTICE AMOS WUNTAH WUNI**

SUIT NO. LD/0439/2023

JARMAINE OPONG-ONYINA ... PLAINTIFF/RESPONDENT
NO. 4 OAK STREET, DOME PILLAR 2
ACCRA

VRS

1. AMINA AL-HASSAN BRAIMAH ... 1STDEFENDANT/APPLICANT
ACCRA

2. THE REGISTRAR
CIRCUIT COURT
ACCRA

RULING

This is a ruling on a preliminary legal objection raised by Counsel for the Plaintiff/Respondent (hereinafter referred to as “the Respondent”) to a motion on notice to set aside a writ of summons. The application was filed on 16th June 2023 by the 1st Defendant/Applicant (hereinafter referred to as “the Applicant”).

On 12th July 2023 when Counsel for the Applicant was poised to move the application, Counsel for the Respondent raised a preliminary legal objection seeking to have the

application dismissed *in limine*. Counsel for the Respondent submitted that, the substantive suit pending before this Court is titled:

JARMAINE OPONG-ONYINA

NO. 4 OAK STREET, DOME PILLAR 2, ACCRA

VRS

1. AMINA AL-HASSAN BRAIMAH

ACCRA

2. THE REGISTRAR

CIRCUIT COURT, ACCRA

The learned Counsel further submits that there are only two (2) Defendants to the suit and as captured in the title of the suit, they are **Amina-Alhassan Braimah** and **the Registrar of the Circuit Court**.

However, the instant application is titled:

“JARMAINE OPONG-ONYINA

VS.

1. AMINA AL-HASSAN BRAIMAH	}	1st
Defendants		
2. BALCHISU AL-HASSAN BRAIMAH		
2. THE REGISTRAR		2nd
Defendant”		

The learned Counsel for the Respondent therefore contends that the substantive suit does not have parties as presented on the face of the motion paper and that the instant application is for an unrelated suit. Counsel maintains that **BALCHISU AL-HASSAN**

BRAIMAH is not a party to the substantive suit; and that, the introduction of the said **BALCHISU AL-HASSAN BRAIMAH** as a party makes the motion not related to the suit.

Counsel urges on the court that suits are identified by the parties to the suit; and that a mismatch between a **Suit Number** and the **Title of the Suit** makes it worse because, it clearly lends credence to the fact that, the application is alien to the suit. It is argued that, there is no suit before the Court where the Suit Number in question is linked to the three (3) parties. In that regard, Counsel contends that the application is incompetent.

The learned Counsel referred to AGYEKUM & AL-HASSAN v. AMADU BABA & ANOR [2003-2004] SCGLR 68 and BUCKMAN & ORS v. ANKOMAYI & ANOR [2013-2014] 2 SCGLR 1379 and strongly contended that the position of procedural law is that, a person cannot be made a party to a suit unless with leave of Court. Therefore, naming a person as a party on any Court process when in fact, and indeed, that person is not a party to the suit from the outset or pursuant to leave of Court is a fundamental error.

In response to the preliminary legal objection, Counsel for the Applicant submits that a preliminary legal objection should be based on law otherwise the law would be reduced to an absurdity. It is Counsel's submission that, when a Defendant is sued in a wrong name or a wrong capacity, the Defendant in responding, is required to disclose the correct name and capacity to the Court and not to repeat the wrong name or capacity.

The learned Counsel admits that the jurisdiction of a Court is dictated by the Plaintiff's complaint and not that of the Defendant. However, in the peculiar circumstances of the instant suit, a close look at the Respondent's **relief D** discloses reference to Suit No. CBL/87/2002 pending at the Circuit Court, Accra (Court 8). In that suit, the parties are

Amina Al-hassan Braimah and Balchisu Al-Hassan Braimah both of whom are joint Plaintiff in that suit.

Counsel therefore submits that, from the reliefs that Plaintiff is seeking in this matter, the Circuit Court Suit No. CBL/87/2002 is the epicenter of the instant suit and so Counsel contends that, the Plaintiff cannot pick and choose any title before this Court. Counsel for the Applicant also submits that as 1st Defendant to this suit, they have a duty to disclose their correct name, designation and capacity before the Court and that is what they have done. The learned Counsel strongly submits that by the application, they sought to do so at the earliest opportunity when they entered Conditional Appearance; arguing that the correct title on the motion paper should read: *Amina Al-hassan Briamah and Balchisu Al-Hassan Braimah as 1st Defendant.*

It is worth stating that the **SUIT NUMBER** of a case is what is referred to in Database Management as a **UNIQUE IDENTIFIER**. Unique Identifiers are said to be “*numeric or alphanumeric strings that are associated with single entities within a given system ...*” They are the keys that literally “open the gate” for access and interaction with a database. With our court cases, the Unique Identifier has always been the SUIT NUMBER regardless of whether one is dealing with the current E-JUSTICE digital system or the manual system of filing.

This Court is fortified by a legion of authorities which hold and support the view that sterile, impotent and arid technicalities seeking to subvert or delay justice have no place in our Ghanaian Courts today. In **BOAKYE VRS TUTUYEHENE** [2007-2008] 2 SCGLR 970, Asiamah JSC stated –

“It is axiomatic that rules of court are devised in the public interest to promote expeditious dispatch of litigation. The courts, however, don’t overlook the associated rules of practice evolved over the years that a plaintiff, should not ordinarily be denied an adjudication of his case on its merits on account of any

procedural default unless the default would cause or have caused a real risk of prejudice to the other party for which costs would not be adequate compensation. Consequently, it is part of the characteristics of our judicial system, and in fact an integral segment of its process, that where the issues are obviously discernible, the court should not shut the door behind the plaintiff simply because the plaintiff has committed a procedural irregularity ..."

Similar sentiments were expressed by Prof Modibo Ocran, JSC in GIHOC REFRIGERATION AND HOUSEHOLD PRODUCTS VRS HANNAH ASSI [2005-2006] SCGLR 458 where he berated the focus on '*technicism*' which are nothing "*but technicalities of the law*" in the face of doing substantial justice in deserving cases.

A couple of years later in REPUBLIC VRS HIGH COURT, ACCRA; EX PARTE ALLGATE CO. LTD. (AMALGAMATED BANK LTD: INTERESTED PARTY) [2007-2008] 2 SCGLR 1041, Date-Bah JSC said that non-compliance with the Rules of Court is to be waived unless such non-compliance went to **a breach of the Constitution; a breach of a statute other than the rules of court; a breach of the rules of natural justice ie *audi alteram partem* rule and *nemo judex in causa sua* rule; and one that otherwise goes to jurisdiction.**

In the peculiar circumstances of the instant application where the suit number (the unique identifier of the substantive case) is stated and the two Defendants as well as the Plaintiff have been indicated on the motion paper, this court will apply the curative powers of Order 81 of the High Court (Civil Procedure) Rules, 2004 (C.I. 47) and in the spirit of Order 1 Rule 1(2) of C.I. 47, regard the application as being in respect of the substantive suit. The legal maxim *ut res magis valeat quam pereat* (meaning - a court ought to render an interpretation not to defeat it) has always had its pride of place in our jurisprudence. See: ABU RAMADAN & NIMAKO v EC & A-G [2013-2014] 2 SCGLR 1654.

As a Court of Equity, it is my respectful view that the preliminary legal objection lacks merit and is accordingly dismissed. Suit is adjourned to 30th October 2023 at 9:00 am for the application to be heard. There will be no order as to costs.

(SGD.)

AMOS WUNTAH WUNI (J)

JUSTICE OF THE HIGH COURT

COUNSEL:

ISAAC BRIGHT AKWANTEY FOR THE 1ST DEFENDANT/APPLICANT

**NANA AGYEI BAFFOUR AWUAH WITH THERESA TABI FOR
PLAINTIFF/RESPONDENT**