

IN THE HIGH COURT OF JUSTICE, GHANA LAND DIVISION (COURT 11),
LAW COURT COMPLEX HELD IN ACCRA ON TUESDAY, THE 25TH DAY OF
JULY, 2023 BEFORE HIS LORDSHIP JUSTICE AMOS WUNTAH WUNI

SUIT NO. LD/0097/2023

DANIEL KWASHIE ... PLAINTIFF/RESPONDENT
HSE. NO. B201D, MENSKROM
McCARTHY SOUTH
ACCRA

VRS

EKOW PHILIP SACEY DEFENDANT/APPLICANT
HSE. NO. C335/13
MAMOBI, ACCRA

RULING

By the rules of court, a party may, without leave of court, amend any of the party's pleadings once at any time before pleadings are closed. The rules also provide that, where the amendment is made without leave, within fourteen (14) days after the service on a party of a pleading amended without leave, the party may apply to the court to strike out the amendment. See: Order 16 rules 3(1) and 4(1).

Also, in the celebrated case of **YEBOA AND ANOTHER v. BOFOUR** [1971] 2 GLR 199, the Court of Appeal decisively and indelibly circumscribed the legal contours and

guiding principles (or 'litmus test') for deciding whether or not an application for an Amendment of a process may be granted by a Court of competent jurisdiction.

In Holdings (7) and (8) of the said *locus classicus* on Amendment, quoted *ad longum* hereunder, the Court speaking through Azu Crabbe JSC (as he then was) stated -

“(7) An application for an amendment (which is governed by Order 28 of the Supreme [High] Court (Civil Procedure) Rules, 1954 (L.N. 140)) may be made as soon as the necessity arises, and as a general rule the court will allow an amendment even up to the last moment, provided that (i) no surprise results, (ii) it does not enable a party to set up an entirely new case or to change completely the nature of his case, (iii) it is not sought to add new parties, (iv) it will not do any injury to the opponent’s case or prejudice him in some way which cannot be compensated by costs or otherwise, (v) the application be made bona fide and (vi) the proposed amendment will not cause undue delay or is irrelevant or useless or would merely raise a technical point. However a court will not grant leave to amend the pleadings after final decree or entry of judgment. Attorney-General v. Corporation of Birmingham (1880) 15 Ch.D. 423, C.A. cited.

(8) The granting or refusal of an application for leave to amend pleadings, even at the last moment in the proceedings, is a matter entirely within the discretion of the trial judge. And the discretion to allow an amendment will be exercised in order that the real issues between the parties may be finally determined. The Court of Appeal will not interfere with the exercise of that discretion unless it is satisfied that the judge applied a wrong principle or can be said to have reached a conclusion, which would work a manifest injustice between parties. In this case the trial judge exercised his discretion properly in allowing the plaintiff to amend his claim or enable the court to award such damages as would fully compensate the plaintiff for the loss of his house. Dicta of Bowen L.J. in Cropper v. Smith (1884) 26 Ch.D. 700 at pp. 710–711, C.A.; of Bramwell L.J. in Tildesley v. Harper (1878) 10 Ch.D. 393 at pp. 396–397, C.A.;

of Sir Montague Smith in Rainy v. Bravo (1872) 36 J.P. 788 at p. 789, P.C.; of Kekewich J. in James v. Smith [1891] 1 Ch. 384 at p. 389; of Sawrey-Cookson J. in Bobo v. Anthony (1931) 1 W.A.C.A. 169 at p. 175 and Wyatt v. Rosherville Gardens Co. (1886) 2 T.L.R. 282 applied.”

Our Courts therefore take the view that parties to a suit may amend Court processes filed by them, however late in the course of judicial proceedings, if the amendments are made in good faith for the purpose stipulated in the rules, namely to facilitate the determination of the real questions in controversy between the parties and to correct defects or errors in the proceedings.

With the instant motion on notice to strike out the Amended Writ of Summons and Statement of Claim filed by the Defendant on 22nd February, 2023, I have painstakingly read the affidavits in support and in opposition to the application as well as the written submissions of both Counsel. The Plaintiff’s amendment of the Writ of Summons (without leave of court), having been made *ex debito justitiae* within time, it is my respectful view that the said amendment will give some traction to the case and facilitate expeditious, effective, complete and final adjudication of the suit. The motion on notice to strike out the writ of summons is accordingly dismissed as not maintainable. There will be no order as to costs. Suit to take its normal and ultimate course.

(SGD.)

AMOS WUNTAH WUNI (J)

JUSTICE OF THE HIGH COURT

COUNSEL:

VICTOR AZAMETI FOR THE PLAINTIFF/RESPONDENT

RICHARD ODUM MENSAH WITH BRIDGETTE BUDU-OKYIR FOR THE APPLICANT