

IN THE HIGH COURT OF JUSTICE GHANA (GENERAL JURISDICTION COURT 4) HELD IN ACCRA ON THE MONDAY THE 31ST DAY OF JULY, 2023 BEFORE HER LADYSHIP OLIVIA OBENG OWUSU, (MRS) J.

SUIT NO: GJ/0663/2022

AMPAH BAABA AWURABENA :: PLT/RESPONDENT
H/NO. 84/10, KANDA – ACCRA

VRS

NDK FINANCIAL SERVICES LTD :: DEFT/APPLICANT
NDK BUILDING, NO. 1 REV HESSE STREET, OSU – ACCRA

R U L I N G

On the 18th of January, 2023 the Plaintiff/Respondent (hereafter referred to as the Plaintiff) caused a Writ of Summons and a Statement of Claim to be issued against the Defendant/Applicant (hereafter referred to as the Defendant) for reliefs endorsed thereon.

After being served with the Writ of Summons and Statement of Claim, the Defendant not only entered Appearance but filed an Application to dismiss the instant suit. On the 21st of February, 2023 Learned Counsel for the Plaintiff raised a preliminary objection to the hearing of the Application to dismiss the suit on the ground that it is legally and

procedurally incompetent and does not properly invoke the jurisdiction of the Court.

The sum-total of the argument by Learned Counsel for the Plaintiff is that because different legal regimes apply a person seeking to strike out a pleading or dismiss a suit for being vexatious and/or an abuse of the processes of the Court must specifically indicate whether he is coming under Order 11 Rule 18 of The High Court (CIVIL PROCEDURE) Rules, 2004 (C.I. 47) or under the inherent jurisdiction of the Court for the Court to determine whether to apply its powers under its inherent jurisdiction or under Order 11 Rule 18.

It is further submitted that the Defendant has failed to indicate whether the instant Application is being brought under Order 11 Rule 18 of C.I.47 or under the inherent jurisdiction of the Court. Counsel's contention therefore is that since the Defendant does not disclose which jurisdiction of the Court it is seeking to invoke the Court must not entertain the instant Application. Counsel prayed the Court to uphold the objection and dismiss the Application.

In reply it is contended by Learned Counsel for the Defendant that the Defendant's failure therefore to endorse on the Motion paper the Order under which the Application was brought is not fatal to its case.

The Court has given due consideration to the arguments put forward by both sides. The Court finds itself in agreement with the submissions of Learned Counsel for the Plaintiff that the Defendant's instant Motion is incompetent and does not properly invoke the jurisdiction of this Court. In applications of this kind the Application ought to state clearly whether it is founded upon the rule or the inherent jurisdiction of the Court in view of the clear differences in the established practices and procedures for invoking the two powers. There is a major difference

between proceedings under the Rules and proceedings under the inherent jurisdiction of the Court, and each type of proceedings dictates substantially different procedural practices. This point was made clear in the case of the Supreme Court in the case of *OKOFOH ESTATES LTD VRS MODERN SIGNS LTD [1995–96] 1 GLR 310*.

On the Defendant's own showing the present action is vexatious and a gross abuse of the Court process due to the pendency of the interpleader proceedings. It seeks to dismiss the action on this ground. Although decisions in the cases of *HARLLEY VRS EJURA FARMS [1977] 2 GLR 179* and *LARTEY AND LARTEY LTD VRS BEANY [1987 – 88] 1GLR 590* were based on the then Order 25 of The High Court (Civil Procedure) Rules, 1954 (LN 140A) I have found them to be helpful on this issue. These cases indicate that with such Applications the Court's jurisdiction can be invoked either under the rules or the inherent jurisdiction of the Court.

There is no indication of the rule under which the defendant has applied to this Court for the dismissal of the suit. Certainly, it has failed to initiate the proceedings for relief in accordance with the prescribed mode. As stated by Gbadegbe JSC in the case of *AHINAKWA II (SUBSTITUTED BY) AYIKAI VRS OKAIDJA III & OTHERS [2011] 1 SCGLR 205 @ 218* “..where the rules of Court prescribe a particular mode for seeking relief the failure to initiate the proceedings for relief in accordance with the prescribed mode is not only an irregularity but raises an issue that goes to jurisdiction..”

It is the considered opinion of the Court that it's jurisdiction has not been properly invoked and that the Application for an Order to dismiss the suit is incompetent. The Court consequently upholds the objection. The Application to dismiss the suit is accordingly dismissed.

(SGD.)

H/L OLIVIA OBENG OWUSU (MRS.)
JUSTICE OF THE HIGH COURT

PARTIES:

PLAINTIFF/RESPONDENT ABSENT

DEFENDANT/APPLICANT ABSENT

COUNSEL:

*JOSEPH WELLINGTON BOWUAH ESQ., HOLDING BRIEF FOR NII
KPAKPO SAMOA ADDO FOR PLAINTIFF/RESPONDENT PRESENT*

*AFIA BEMA OSEI HOLDING BRIEF FOR ANDREW APPAU OBENG
FOR DEFENDANT/APPLICANT PRESENT*

REFERENCES:

CASES:

1. AHINAKWA II (SUBSTITUTED BY) AYIKAI VRS OKAIDJA III & OTHERS [2011] 1 SCGLR 205 @ 218.
2. OKOFOH ESTATES LTD VRS MODERN SIGNS LTD [1995–96]1 GLR 310.
3. HARLLEY VRS EJURA FARMS [1977] 2 GLR 179
4. LARTEY AND LARTEY LTD VRS BEANY [1987–88] 1GLR 590.

STATUTES:

1. THE HIGH COURT (CIVIL PROCEDURE) RULES, 1954 (LN 140A)