

IN THE HIGH COURT OF JUSTICE GHANA (GENERAL JURISDICTION COURT 4) HELD IN ACCRA ON THE THURSDAY THE 27TH DAY OF JULY, 2023 BEFORE HER LADYSHIP OLIVIA OBENG OWUSU, (MRS) J.

SUIT NO: GJ/0456/2023

BERNICE APPIAH :: PLT/RESPONDENT
LOCAL ADDRESS: PLATINUM APARTMENTS, WEST TRASSACO
F2AP4, ACCRA – GHANA
FOREIGN ADDRESS: 320 SPRUCE STREET GLENOLDEN PA 19036, USA

VRS

CLEMENT (BOLT DRIVER) :: 1ST DEFENDANT
ACCRA

BOLT GHANA COMPANY LTD :: 2ND DEF/APPLICANT
ODEL HEIGHTS, DZORWULU – ACCRA

PARTIES:

PLAINTIFF/RESPONDENT ABSENT

1ST DEFENDANT ABSENT

2ND DEFENDANT/APPLICANT ABSENT

COUNSEL:

DIVINE DOTSE TETTEY ESQ., WITH ELORM ASHIAGBOR ESQ.,
HOLDING BRIEF FOR MARTIN KPEBU ESQ., FOR
PLAINTIFF/RESPONDENT PRESENT

GWENDY BANNERMAN ESQ., FOR 2ND DEFENDANT/APPLICANT
PRESENT

R U L I N G

On the 1st February, 2023 the Plaintiff/Respondent (hereafter referred to as the Plaintiff) instituted this action claiming six reliefs against the Defendants. The 2nd Defendant/Applicant (hereafter referred to as the 2nd Defendant) through its Solicitor entered Conditional Appearance to the Writ of Summons on 3rd of March, 2023. Thereafter on the 20th of March, 2023 it filed a Motion to set aside service of the Writ of Summons and Statement of Claim pursuant to Order 9 rule 8 of The High Court (Civil Procedure) Rules, 2004 (C.I. 47).

Learned Counsel for the Plaintiff raised a preliminary objection to the hearing of the Application. He submitted that the Application had not been brought timeously, the Application having been brought 14 days after the 2nd Defendant entered Conditional Appearance. He contended that the Application had no leg to stand on and that same should be dismissed. Counsel based his argument on Order 9 Rule 7(2) of C.I. 47.

In reply Learned Counsel for the 2nd Defendant submitted that by the reckoning of time non-working days are generally excluded and therefore the 2nd Defendant was within the time prescribed by the rules for filing an Application to set aside a Writ.

Order 9 rule 8 of C.I. 47 makes it clear that a Defendant has 14 days after entering Conditional Appearance to apply to the Court to set aside the Writ.

Order 9 rule 8 of C.I. 47 provides that

“A Defendant may at any time before filing appearance or if the Defendant has filed a Conditional Appearance within 14 days after filing appearance apply to the Court for an Order to

(a) set aside the writ or service of the Writ

(b) declare that the writ or notice of it has not been served on the defendant; or

(c) *discharge any order that gives leave to serve the notice on the Defendant outside the country.*

Under Order 80 rule 1(5) of C.I. 47 where the period in question is a period of 7 days or less the rules exclude Saturdays, Sundays and public holidays. Order 80 rule 1 (2) of C.I. 47 however provides that where an act is required to be done within a specified period after or from a specified date the period begins to run immediately after that date. The non-working days of the Court will therefore not be excluded in the reckoning of time in this instance. It is thus clear that the instant Application contravenes Order 9 rule 8 of C.I. 47. The Writ was issued on the 1st February, 2023. The 2nd Defendant entered Conditional Appearance on 3rd March, 2023 and failed to set aside the Writ of Summons within the stipulated time of 14 days. The 2nd Defendant had up to 17th of March, 2023 to file the instant Application but it was not until 20th March, 2023, that it did this. The Conditional Appearance had therefore crystallized into an unconditional Appearance at the time the instant Application was filed. The preliminary objection is valid. I consequently uphold it and dismiss the Application to set aside service of the Writ of Summons and Statement of Claim. The Plaintiff is awarded costs of Two Thousand Ghana Cedis (**¢2,000.00**).

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

REFERENCE:

ENACTMENT

The High Court (Civil Procedure) Rules, 2004 (C.I. 47).