

IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT OF JUSTICE,
COMMERCIAL DIVISION, HELD IN ACCRA ON MONDAY, THE 4TH DAY OF
SEPTEMBER, 2023 BEFORE HIS LORDSHIP FRANCIS OBIRI 'J'.

SUIT NO. CM/RPC/0702/2023

CANADIAN GLOBAL SEA CARRIES INC - PLAINTIFF

Vs

MARITECH INTERNATIONAL LIMITED - DEFENDANT

RULING

I have listened to the submission for the grant of the application ex parte for preservation of two containers named in the Plaintiff/Applicant (hereinafter called the Applicant) motion ex parte filed on 31st August, 2023.

I have also listened to the submission by counsel for the Applicant. In this application, the Applicant is praying the court for an order to preserve two containers which are currently located on or around the Sea shore of Ghana at Tema.

I have also examined the documents filed in this application. This application is an offshoot of a writ of summons the Applicant filed on 31st August, 2023 before this court against the Defendant.

On the writ of summons, the Defendant residential address as provided by the Applicant is Nicosia in Cyprus. This means, the notice of the writ will be served out of the jurisdiction of this court. However, the Applicant did not seek the leave of the court

before issuing the writ in clear violation of Order 2 rule 7(5) of C.I 47. The provision under Order 2 rule 7(5) of C.I. 47 is couched in mandatory terms which the Applicant failed to comply with in this case.

Again, the containers the Applicant is praying the court to make a preservation order in respect of same are located on or around the Sea shore at Tema. There are High Courts which are located in Tema. It is therefore my view, that the forum convenience for the determination of the case is Tema and not Law Court Complex in Accra.

See: REPUBLIC v HIGH COURT, CAPE COAST EX PARTE MARWAN KORT [1998-99] SCGLR 833

Furthermore, the Applicant attached a copy of the contract between itself and the Defendant as exhibit AP. In this contract, the parties agreed that if there is any dispute between them, the place of arbitration will be London, UK.

The parties did not contract or agree that the place of resolution of their dispute will be in Ghana.

It is the law, that the courts must uphold dispute resolution clauses in agreement which the parties have put forward, such as the one in exhibit AP. This is considered to be sound business practice.

See: BCM GHANA LTD. V ASHANTI GOLDFIELDS LTD. [2005-2006] SCGLR 602

The Dispute Resolution clause is what the Applicant and the Defendant to exhibit AP, agreed as to how and where they would resolve any issue which will arise from exhibit AP. The law is that a party is bound by his own agreement. And such a party cannot resile from it or seeks to deny it later.

See: AGBESI AND OTHERS V GHANA PORTS AND HARBOURS AUTHORITY [2009] 20 MLRG 108 SC

The law is also settled, that a valid arbitration clause in an agreement reflect the mutual and the free will of the parties to resort to arbitration and not to any other means of dispute resolution, including State Courts. The consent of both parties to submit their dispute to arbitration then becomes the cornerstone of the agreement or the contract which the parties cannot resile from it.

See: **DUTCH AFRICAN TRADING CO. BV v WEST AFRICAN MILLS CO. LTD. [2022] 178 GMJ 533 CA**

It is therefore my view, that the parties to exhibit AP who are the Applicant and the Defendant on their own agreement decided not to resort to Ghanaian courts if there is any dispute in respect of exhibit AP.

Even though this is a one-sided application. However, a court is not to grant an application hook, line and sinker because it is one sided. The court must scrutinise the application to see whether its jurisdiction has been properly invoked.

See: **AMIDU (NO. 1) v ATTORNEY-GENERAL, WATERVILLE HOLDINGS (BVI) LTD & WOYOME (NO.1) [2013-2014] 1 SCGLR 112**

A court has power to raise the issue of jurisdiction even if it is not raised by any of the parties.

See: **BIMPONG-BUTA v GENERAL LEGAL COUNCIL [2003-2004] 2 SCGLR 1200**

ANTHONY SAKYI v GA SOUTH MUNICIPAL ASSEMBLY [2022] 178 GMJ 216 CA

From the above rendition, I am of the view, that the court's jurisdiction has not been properly invoked to grant the application. The application is predicate on the writ of summons which is faulty in many respects as stated above. The application therefore fails and same is dismissed.

SGD.

FRANCIS OBIRI

(JUSTICE OF THE HIGH COURT)

COUNSEL

GEORGE ABORGAH FOR THE PLAINTIFF/APPLICANT

AUTHORITIES

1. REPUBLIC v HIGH COURT, CAPE COAST EX PARTE MARWAN KORT [1998-99]
SCGLR 833
2. BCM GHANA LTD. V ASHANTI GOLDFIELDS LTD. [2005-2006] SCGLR 602
3. AGBESI AND OTHERS V GHANA PORTS AND HARBOURS AUTHORITY [2009]
20 MLRG 108 SC
4. DUTCH AFRICAN TRADING CO. BV v WEST AFRICAN MILLS CO. LTD. [2022]
178 GMJ 533 CA
5. AMIDU (NO. 1) v ATTORNEY-GENERAL, WATERVILLE HOLDINGS (BVI) LTD
& WOYOME (NO.1) [2013-2014] 1 SCGLR 112
6. BIMPONG-BUTA v GENERAL LEGAL COUNCIL [2003-2004] 2 SCGLR 1200
7. ANTHONY SAKYI v GA SOUTH MUNICIPAL ASSEMBLY [2022] 178 GMJ 216 CA

