

IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT OF JUSTICE, COMMERCIAL DIVISION, HELD IN ACCRA ON TUESDAY, THE 15TH DAY OF AUGUST, 2023 BEFORE HIS LORDSHIP FRANCIS OBIRI 'J'.

SUIT NO. CM/BDC/0569/2023

MR. DWAMENA AGYEKUM BENNET - PLAINTIFF

Vs

THE MANAGING DIRECTOR - DEFENDANT
MELCOM LIMITED
GHANA

RULING

I have listened to the submissions by counsel for both parties. I have gone through the motion paper filed in this application.

From the statement of claim, it appears to me, that the Plaintiff has a cause of action in this case.

Cause of action is defined as the factual situation, the existence of which entitles one person to obtain a relief from the court against another person.

It can also be defined as a particular action of the Defendant which gives the Plaintiff his cause of complaint against the Defendant.

See: **IN RE MENSAH (DECD.) MENSAH AND SEY v INTERCONTINENTAL BANK (GH.) LTD. [2010] SCGLR 118**

**JOHN MAHAMA v ELECTORAL COMMISSION AND NANA ADDO DANKWA
AKUFO-ADDO [2021] 171 GMJ 473 SC**

However, the issue is that who is the proper person to be sued by the Plaintiff to defend any cause of action that he may have.

The Plaintiff allegations in the Statement of Claim are against Melcom Limited Ghana as a legal entity and not against the Managing Director who is the Defendant herein.

The Plaintiff has also not averred anywhere in the Statement of Claim, that the Managing Director breached the fiduciary duty he or she has towards the entity called Melcom Limited Ghana.

Therefore, if the Plaintiff was allegedly injured at the premises of Melcom Limited Ghana, then the proper person to sue is the legal entity called Melcom Limited Ghana and not the Managing Director simpliciter.

I am therefore of the view, that the Plaintiff has no cause of action against the Defendant herein.

The application therefore succeeds. The Plaintiff's action filed on 27th June, 2023 is hereby set aside or strike out as not disclosing any cause of action against the Defendant. No order as to cost.

SGD.

FRANCIS OBIRI

(JUSTICE OF THE HIGH COURT)

COUNSEL

**TONNY NYARKO HOLDING BRIEF FOR SAMUEL CUDJOE FOR THE
DEFENDANT/APPLICANT**

**NICHOLAS NYANTAKYI HOLDING BRIEF FOR KUJO ELIAS McDAVE FOR
THE PLAINTIFF/RESPONDENT**

AUTHORITIES

- 1. IN RE MENSAH (DECD.) MENSAH AND SEY v INTERCONTINENTAL
BANK (GH.) LTD. [2010] SCGLR 118**
- 2. JOHN MAHAMA v ELECTORAL COMMISSION AND NANA ADDO
DANKWA AKUFO-DDO [2021] 171 GMJ 473 SC**