

IN THE SUPERIOR COURT OF JUDICATURE
IN THE HIGH COURT OF JUSTICE COMMERCIAL DIVISION
HELD IN ACCRA ON MONDAY, THE 21ST DAY OF AUGUST, 2023
BEFORE HIS LORDSHIP FRANCIS OBIRI (J)

SUIT NO. CM/RPC/0377/2023

RHEMA ENERGY COMPANY LIMITED - PLAINTIFF

VS

1. ALFRED YAO DOE AGBOSU - DEFENDANTS
2. ANTHONY FOFIE

RULING

I have listened to the submission by counsel for the Plaintiff/Applicant (hereinafter called the Applicant). I have also gone through the documents filed in this application. In this case, the Applicant filed the instant application on 23rd June, 2023 for Summary Judgment against the Defendants/Respondents (hereinafter called the Respondents). It was served on the Respondents counsel on 26th June, 2023.

The Respondents filed affidavit in opposition on 5th July, 2023. It has been served on the Applicant herein. The Respondents counsel is not in court today to respond to the Applicant's application.

However, the court will consider the Respondents affidavit in opposition in this delivery. After all, a court can even decide to grant or refuse an application based on the documents filed. Therefore, a motion does not need to be moved formally before it can be granted or refused. Once the documents are before the court and the return date is due.

See: **REPUBLIC v COURT OF APPEAL, ACCRA EX PARTE EASTERN ALLOY COMPANY LIMITED [2007-2008] 1 SCGLR 371**

It is the law, that a court will grant summary judgment in a case where the defendant defence does not disclose any legal defence. Summary judgment can be granted in part or in whole in respect of the plaintiff claims against the defendant.

Therefore, the purpose of summary judgment is to allow a plaintiff to obtain judgment without the case going through formal trial.

See: **SANUNU v SALIFU [2009] SCGLR 586**

YARTEL BOAT BUILDING COMPANY v ANNAN [1991] 2 GLR 11

ATLANTA TIMBER COMPANY v VICTORIA TIMBER CO. LTD. [1992] 1 GLR 221

However, what will amount to legal defence in a case will depend on the circumstances of each case.

Again, summary judgment is a judgment on the merits of the case, even though it is obtained by a formal motion without a plenary trial. It is granted on the simple grounds, that because the defence does not disclose any legal defence, it would be a waste of the court's time if the case is to go through full trial.

See **ASAMOAH v MARFO [2011] 2 SCGLR 832**

In this case, counsel for the Applicant submitted that the Respondents' defence does not disclose any legal defence. Therefore, the court should grant the Applicant claims by way of summary judgment.

The Respondents in their affidavit in opposition to the application have raised the issue of capacity of the Applicant to initiate the action in the first place. They have also raised the issue, that the Applicant has no cause of action against them. These issues are contained in paragraphs 9, 14, 15 and 16 of the Respondents' affidavit in opposition.

The law is settled that cause of action is a factual situation, the existence of which gives the Plaintiff his cause of complaint against the Defendant. It can also mean, the particular action of the Defendant which gives the Plaintiff his right to ask for a relief from court against the Defendant.

See: IN RE MENSAH (DECD); MENSAH & SEY v INTERCONTINENTAL BANK (GHANA) LIMITED [2010] SCGLR 118

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

The law is settled, that the issue of capacity can be raised at any time in a case. It can be raised for the first time on appeal.

See: KWAKU v SERWAH & OTHERS [1993-1994] 1 GLR 429 SC

THE MUZAMA DISCO CHRISTO CHURCH v JEHU APPIAH [2010] 27 MLRG 56 CA

It is therefore the law, that if a party has no capacity to sue, then his case should not be considered on its merits even if he has a cast-iron case.

See: YORKWA v DUAH [1992-1993] GBR 278 CA

Therefore, where the capacity of a person to initiate an action is challenged, he has to establish it before his case can be considered on its merits.

See: **ASANTE-APPIAH v AMPONSA ALIAS MANSAH [2009] SCGLR 90**

COLEMAN v TRIPOLLEN & OTHERS [2014] 70 GMJ 20 CA

Capacity of a party to sue in an action can be a question of law. It can also be a question of fact. It can also sometimes be a question of mixed law and fact. If it is a question of fact or a question of mixed law and fact, then it can only be determined when evidence is led.

See: **FRIMPONG v ROME [2013] 58 GMJ 131 CA**

It is therefore the law that if an action succeeds or can be dismissed on grounds of statute of limitation, lack of locus standi, capacity etc. then the court should not proceed to determine the merits of the case irrespective of the evidence before the court.

See: **STEPHEN v APOH [2010] 27 MLRG 12 CA**

AKRONG & ANOTHER v BULLEY [1965] GLR 469 SC

From the above discussions, it is my view, that the Respondents' issue challenging the Applicant capacity to sue in the first place cannot be swept under the carpet. It calls for the Applicant to establish same before the merits of its case can be determined.

Consequently, I am of the view, that once the issue of the Applicant's capacity has not been determined, the court will not be able to grant the Applicant's application for summary judgment in its favour. The application therefore fails and same is dismissed. No order as to cost.

SGD.

FRANCIS OBIRI

JUSTICE OF THE HIGH COURT

COUNSEL

SAMUEL PINAMAN ADOMAKO HOLDING BRIEF FOR AUGUSTINE KIDISIL
FOR THE PLAINTIFF/APPLICANT

AUTHORITIES

1. REPUBLIC v COURT OF APPEAL, ACCRA EX PARTE: EASTERN ALLOY COMPANY LIMITED [2007-2008] 1 SCGLR 371
2. SANUNU v SALIFU [2009] SCGLR 586
3. YARTEL BOAT BUILDING COMPANY v ANNAN [1991] 2 GLR 11
4. ATLANTA TIMBER COMPANY v VICTORIA TIMBER CO. LTD. [1992] 1 GLR 221
5. ASAMOAH v MARFO [2011] 2 SCGLR 832
6. IN RE MENSAH (DECD); MENSAH & SEY v INTERCONTINENTAL BANK (GHANA) LIMITED [2010] SCGLR 118
7. JOHN DRAMANI MAHAMA v ELECTORAL COMMISSION & NANA ADDO DANKWA AKUFO-ADDO [2021] 171 GMJ 473
8. KWAKU v SERWAH & OTHERS [1993-1994] 1 GLR 429 SC

9. THE MUZAMA DISCO CHRISTO CHURCH v JEHU APPIAH [2010] 27 MLRG 56 CA
10. YORKWA v DUAH [1992-1993] GBR 278 CA
11. ASANTE-APPIAH v AMPONSA ALIAS MANSAH [2009] SCGLR 90
12. COLEMAN v TRIPOLLEN & OTHERS [2014] 70 GMJ 20 CA
13. FRIMPONG v ROME [2013] 58 GMJ 131 CA
14. STEPHEN v APOH [2010] 27 MLRG 12 CA
15. AKRONG & ANOTHER v BULLEY [1965] GLR 469 SC