IN THE SUPERIOR COURT OF JUDICATURE AND IN THE HIGH COURT OF JUSTICE AMASAMAN ACCRA REGION HELD BEFORE HER LADYSHIP JUSTICE PRISCILLA DAPAAH MIREKU (MRS.) SITTING ON TUESDAY THE 25TH DAY OF JULY, 2023

SUIT NO. E12/AHC/40/2023

CHARLES YARNIE & 2 OTHERS

VRS:

PRINCE NII AMATEY & 4 OTHERS

RULING ON APPLICATION ON NOTICE TO STRIKE OUT WRIT OF SUMMONS AND STATEMENT OF CLAIM FOR LACK OF CAPACITY

The plaintiff instituted this action against the defendant for the following reiefs;

a. A declaration that Amanfro has always been ruled and managed by a head of family.
b. A declaration that there are no known families at Amanfro known as Defendant's families.
c. An order perpetually injuncting the Defendants restraining them, their families and those who may be claiming through them from holdin themselves as heads or family members of the Yarnie Family.

The first plaintiff avers that he instituted this action in his capacity as the head and lawful representative of the Amanfro family near Pokuase, Accra whilst the 2nd and 3rd plaintiffs sue in their capacity as principal elders of the Amanfro family.

The defendant has filed this instant application under consideration for an order to strike out the Writ of summons and statement of claim of the plaintiffs for lack of capacity. According to the applicant, the 1st plaintiff is not known to be the head of any Amanfro Royal family and the 2nd and 3rd Plaintiffs are also not known as elders of any of the families. That the secretary for Amanfro Royal family has affirmed that this action was commenced without their knowledge and approval. That the plaintiffs in instituting this action did not consult or seek the consent of the other families and can therefore not institute an action against the chief and some elders of the family without the knowledge of the Amanfro traditional Council. That the Plaintiffs have disingenuously clothed a seemingly chieftaincy issues in the coat of land suits. The applicants further avers that the plaintiffs have adopted unhealthy and disingenuous attitude of court shopping thereby littering the courts with multiple suits. That the Hgh Court, Land division, Accra presided over by Amos Wuni J dismissed a similar Writ of Summons on 14th November, 2022. That in the year 2022 alone a total of five (5) suits were instituted by the plaintiffs against the family and that is an abouse of the coiurt processes. That in the circumstances he prays this court to struck out the Writ of Summons and Statement of Claim instituted by the plaintiffs.

The plaintiffs are vehemently opposed to the instant application. According to the respondents, the Amafro village does not have a stool and have never had a stool till date and that the publication by the 5th Defendant in the Daily Graphic referred to by the applicants was rebutted with a disclaimer published on 28th January, 2021 in the same daily graphic publication. That Amafro land is a family land and not a stool land and therefore the 5th Defendant can never be the head of the plaintiff's family. That per Ga custom, head of families are not chiefs to be installed as depicted in the applicants Exhibit 'B'. According to the 1st plaintiff, upon being a[pointed as the head of family, he deposed to an affidavit in support to be sunstituted as the lawful head of family as the 3rd Defendant's suit no.

LD/0091/2015 whiles the 5th Defendant in this suit was the 5th Defendant in that suit without any objection from him. That the 2nd and 3rd plaintiffs are the most senior principal elders of the Yarnie Family upon whose advice and authority that the 4th & 5th Defendants father was appointed as head of family. That the 1st plaintiff is the proper and rightful head of family of Amanfro family. That it is the 5th defendant who keeps on changing his name and capacity in one breath as head of family and in another breath as a chief. That it is clear from the depositions that the Defendants/Applicants are desperate and in an effort to avoid the Honourable Court from going into the merits of this pending suit and thus their instant application ought to be dismissed as same is frivolous and vexatious.

The issue before this court for determination in this instant application is whether or not the plaintiffs have capacity to institute this action.

In has been held in the case of **REPUBLIC V. HIGH COURT, ACCRA, EXPARTE ARYEETEY (ANKRA INTERESTED PARTY) [2003-2004] SCGLR 398** that, "*any challenge to capacity therefore puts the validity of a writ in issue. It is a proposition familiar to all lawyers that the question of capacity, like plea of limitation, is not concerned with the merits so that if the axe falls, then a defendant who is lucky enough to have the advantage of the unimpeachable defence of lack of capacity in his opponent, is entitled to insist upon his right*."

The 1st plaintiff alleges that he is suing in his capacity as the head of family of the Amanfro family which same has been challenged by the defendants. The defendants makes certain averments that there is an Amanfro traditional counsel which consists of five families and the 1st plaintiff is not the head of family of any of the families. The applicant mention a royal family and the respondent denies of the existence of same. The applicant also denies the 2nd and 3rd plaintiffs being described as principal elders of the Amanfro family and depose that they are ordinary members of the family.

In the case of SARKODEE I V. BOATENT II [1982-83] GLR 715, the court was of the view that since it turned out that the others were all dead and were known to be dead

at the date of the filing of the petition, an order that evidence be led to determine whether the appellant obtained the prior consent or support of the five chiefs he named in his petition would be pointless.

In this instant case, this issues raised by both the applicant and respondents are issues that evidence ought to be led for the issue of capacity to be determine and the court is of the view that it cannot be dealt with by the depositions in the affidavits.

In the case of **ASANTE-APPIAH V. AMPOSAH ALIAS MANSAH [2009] SCGLR 90**, it was held that,

"*… where the capacity of a person is challenged, he has to establish it before his case can be considered on its merits*".

Also in the case of FATAL V. WOLLEY [2013-2014] 2 SCGLR 1070, the Supreme Court unanimously dismissing the appeal by the defendant from the judgment of the court of Appeal held that, the legal question of capacity, like other legal questions, such as jurisdiction, may be raised even on appeal. But it is trite learning that the principle is clearly circumscribed by law. The right to raise legal issues even at such a late stage is legally permissible only if the facts, is any, upon which the legal question is premised are either ubdisputed; or if disputed, the requisite evidence had been led in proof or disproof of those relevant facts, leading to their resolution by the trier of facts."

No evidence has been led in the proving or disproving of the plaintiffs alleged lack of capacity. The applicant also raised issues of abuse of courts processes and others. Both parties did attach exhibits to prove their depositions but this court is of the view that, it will be just and necessary for evidence to be taken on oath for the determination of this issue of capacity as that is the bases the applicant is praying for the instant suit to be dismissed. Thus, the plaintiffs are to prove their capacity by leading of evidence. Both parties are to file their witness statements in respect of the issue of capacity within 30 days.

SGD

MRS. PRISCILLA DAPAAH MIREKU J.

HIGH COURT , AMASAMAN - ACCRA