

IN THE SUPERIOR COURT OF JUDICATURE AND IN THE HIGH COURT OF JUSTICE, AMASAMAN , ACCRA IN THE GREATER ACCRA REGION HELD BEFORE HIS LADYSHIP JUSTICE PRISCILLA DAPAAH MIREKU (MRS) SITTING ON WEDNESDAY 19<sup>TH</sup> JULY, 2023

**SUIT NO: E12/AHC/79/23**

# THE REPUBLIC VRS

**THE HEAD GHANA IMMIGRATION SERVICE      - RESPONDENT**

**THE HON. ATTORNEY GENERAL**

**EXPARTE**

**EMERALD ABENA AMPONSAH                         -APPLICANT**

## RULING

Order 67 Rule (1) of C.I 47 provides that, “A person who seeks redress in respect of the enforcement of any fundamental human right in relation to the person under article 33 (1) of the constitution shall submit an application to the High Court”.

Rule 3 (1) of Order 67 also provides that, “*The application shall be submitted to the High Court within (a) six (6) months of the occurrence of the alleged contravention; or (b) three months of the applicant becoming aware that the contravention is occurring or is likely to occur.*”

The Respondent has raised a preliminary legal objection to the applicant's application on the notice for an order to compel the 1<sup>st</sup> Respondent to ease trial restrictions imposed on the applicant pursuant to Order 67 of the C.I 47; articles 15,17 and 21 of the 1992 constitution. The objection is to the effect that the applicant's application is filed out of time as the imposition of the restriction was done a year ago and it is on the applicant the

onus to show how and when the said restriction came to her attention. That stating that she had notice recently is not enough.

Counsel for the applicant is also vehemently opposed to this objection and submits that the applicant has stated in her affidavit in support that the applicant had notice of the said restriction when she decided to travel recently and caused her lawyer to file the instant application immediately.

According to the applicant counsel, the court should apply Order 1 rule 1(2) which is to ensure all matters are effectively and speedily determine. That the Attorney General is one of a nominal party and the essence of the Attorney General coming into the matter is primarily to enable the State to assist the judiciary to remedy whatever injustice that might occurred to the applicant. Counsel further depose that paragraph 5 is in the present tense so there is no ambiguity as to time.

Clearly Order 67 rule 3(1) of C.I 47 states categorically the time frame within which an applicant shall make an application of this nature under Order 67 is to be made.

Subrule 1(a) of Rule 3 provides 6 months of occurrences of the alleged contravention and sub rule 1(b) provides 3 months of the applicant becoming aware that the contravention is occurring or is likely to occur. The applicant respondent alleges in her affidavit that “that the applicant has decided to travel outside the country to purchase goods for sale locally and is part of her preparations has caused an investigation to be conducted with response to the 1<sup>st</sup> Respondent.

The applicant further deposed that her attention has been drawn to the fact that her name has been placed on the “stop list” which she was told that the 1<sup>st</sup> Respondent has placed a restriction on her free movement outside the borders of Ghana.

An affidavit in support an application according to Order 19 rule 4 provides that, *“every application shall be supported by affidavit deposed to by the applicant or some person duly authorised by the applicant and stating the fact on such the applicant relies, unless any of these rules provides that affidavit shall not be used or unless the application is grounded entirely on matters of law or procedure which shall be stated in the motion paper.”*

Thus it would have been prudent for the applicant to state in her affidavit in support as at when she had notice of the contravention as she indicated the date of her last instinct. The issue of time is very important in this instant application as that will enable the court make a determination whether the jurisdiction of the court has rightfully been invoked and should entertain this application.

Order 1 rule 1 (2) by C.I 47 will not apply and this also does not fall under Order 81 of C.I 47 that the court can use to cure irregularities. There is nothing on the face of the application that suggests that the contravention came to the notice of the applicant / respondent within 3 months of the instant application. This preliminary legal objection is hereby sustained and the application on notice for an order to compel the 1<sup>st</sup> Respondent to ease travel restriction is hereby struck out. There will be no order to cost.

(SGD)

**PRISCILLA DAPAAH MIREKU (J) (MRS.)  
(JUSTICE OF THE HIGH COURT)**

**PARTIES** : 1<sup>ST</sup> RESPONDENT REPRESENTED BY A.S.I AKOSUA AYAKOR  
TUAPANY  
2<sup>ND</sup> RESPONDENT ABSENT  
APPLICANT ABSENT

**COUNSEL :** ANNE-MARIE AYANRU –ASSISTANT STATE ATTORNEY  
FOR RESPONDENT

YAW ANOKYE FRIMPONG FOR APPLICANT