

IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT OF JUSTICE (LAND DIVISION) ACCRA HELD ON FRIDAY THE 17TH DAY OF FEBRUARY, 2023 BEFORE HER LADYSHIP JUSTICE JENNIFER MYERS AHMED (MRS), JUSTICE OF THE HIGH COURT.

SUIT NO: LD/0595/2022

NII OBODAI ANNAN : PLAINTIFF

VRS

IVAN BRUCE CUDJOE : DEFENDANT

PLAINTIFF: Present

DEFENDANT: Present

COUNSEL FOR PLAINTIFF: Mr. Richard Klu Kpetsi h/b of Mr. J.A.
Larkai - Present

COUNSEL FOR DEFENDANT: Ms. Mavis Dzandu – Present

RULING

The defendant after entering conditional appearance to the writ of summons on the 29th November 2022 filed the instant application on the 9th of December 2022 praying this court to strike out the plaintiff's writ of summons and statement of claim as an

abuse of the process of court under order 11 rule 18(1)(d) of C.I. 47 and under the inherent jurisdiction of the court.

It is provided under order 9 rule 8 of C.I. 47 that a defendant may at any time before filing appearance or if the defendant has filed a conditional appearance, within 14 days after filing appearance apply to the court for an order to

- (a) Set aside the service of the writ;
- (b) Declare that the writ or notice of it has not been served on the defendant; or
- (c) Discharge any order that gives leave to serve the notice on the defendant outside the country.

Counsel for the plaintiff who is naturally opposed to the Application contends that the defendant is not entitled to apply to set aside the writ after entry of conditional appearance and cites

Republic vrs. High Court Accra, *Exparte Aryeetey (Ankrah)* interested party [2003 – 2004] 1SCGLR 398.

In this case, the Supreme Court listed the grounds under which a party will enter conditional appearance

- (a) Non – compliance with the rules or the issuance of the writ or notice of the writ;
- (b) Non – compliance with the rules of court on the service of the writ and;
- (c) Lack of jurisdiction of the court.

Emboldened by this, the plaintiff’s counsel is of the view that the defendant does not have a bonded defence to the action and that the defendant is “not attacking the plaintiff’s writ of summons and statement of claim on any of the grounds” in Republic vrs. High Court; *exparte Aryeetey* and thus the Application be dismissed.

I will say this, that in contrast to *Exparte Aryeetey*, the defendant herein has not stated that he has an iron clad defence to the action, and has not raised any plea of *res judicata*. His main premise is that he has no interest whatsoever in the subject matter of dispute warranting the issuance of the writ against him.

Granted that the Application was brought under order 11 rule 18(1)d and under the inherent jurisdiction of the court, there is no fetter on the defendant who has entered conditional appearance applying to dismiss the suit under order 11 rule 18 of C.I. 47. Having filed his Application under order 11 and under the inherent jurisdiction of the court, it is the view of this court that this court is seised with power to exercise its inherent jurisdiction to summarily terminate proceedings. In fact the Supreme Court in holding 4 of the *Exparte Aryeetey* (supra) stated this:

"...However, unlike its under order 25, rule 4 of LN 140 A the court in the exercise of the power under its inherent jurisdiction could consider all the facts, including affidavit evidence. Accordingly, although in the instant case the respondent ought not be entitled after entry of his conditional appearance to ask the court to strike the applicant's writ and statement of claim on the grounds that his action was vexatious, scandalous and an abuse of the process of the court, since the trial High Court justice found the applicant's application "a serious abuse of the court", she was justified in exercising the court's inherent jurisdiction in summarily terminating the proceedings".

The submission of the defendant/applicant herein is that he is not the legal or beneficial owner of the subject matter, so how does one institute an action against such a person who has no interest in the subject matter? How is he going to raise a defence? What will be his interest?

One cannot create a cause of action against a party who has no interest in the subject matter, for a cause of action should always be against the proper defendant.

The defendant has reiterated that the land does not belong to him but to his mother and thus in the view of this court, he not having any interest in the subject matter, he cannot be sued in respect of it.

The court has also taken note of the fact that the same subject matter is the subject of litigation in another court of coordinate jurisdiction in which one Bishop Odattey, also claiming to be the head of the Osu Tetteh family, as does the plaintiff herein, sued the defendant's mother Jane Bruce-Tagoe for declaration of title and consequent reliefs to

the same subject matter herein. This information has come about from the affidavit evidence of the defendant and from all indications it is still pending and has not been concluded. Although this is not the basis of the court's decision to set aside the service of the writ on the defendant, the plaintiff on behalf of the family he claims to be head of, must pursue that suit to its logical conclusion instead of choosing to "prosecute" so to speak the defendant in this court. The writ of summons is thus set aside/struck out.

(SGD.)

**JENNIFER ANNE MYERS AHMED J, (MRS.)
JUSTICE OF THE HIGH COURT**