

IN THE SUPERIOR COURT OF JUDICATURE IN THE HIGH COURT OF JUSTICE (COMMERCIAL DIVISION) ACCRA HELD ON FRIDAY THE 24TH DAY OF MARCH, 2023 BEFORE HER LADYSHIP AKUA SARPOMAA AMOAH J. (MRS.) JUSTICE OF THE HIGH COURT

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SUIT NO.: CM/MISC/0158/2023

STEPHEN KOMLA ADOM .. PLAINTIFF

VS.

DOMINION PAINTS MANUFACTURING ..

DEFENDANT

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PARTIES: ABSENT

COUNSEL: - JULIUS NKETIAH WITH ETELLA ELIKPLIM ADABLA FOR APPLICANT/RESPONDENT - PRESENT

PRINCE BOAHEN GYAN HOLDING BRIEF FOR SEAN POKU FOR RESPONDENT/APPLICANT - PRESENT

J U D G M E N T

INTRODUCTION

On the 1st of December, 2022 the Respondent to the instant Application (as Applicant therein) filed an Originating Motion for an Order for Injunction and Declaration of Nullity under **Section 218** of the **Companies Act, 2019 (Act 992)**.

Upon service of the said Motion on the Applicants (as Respondents therein) they launched the present Application seeking an Order of this Court striking out **Paragraphs 5 to 23** of the depositions in the affidavit filed in support of the said Originating Motion and for a further Order dismissing same.

GROUND FOR APPLICATION

According to the Applicants, their Application rests on the principle that the law frowns on a multiplicity of suits and that a party will not be permitted to institute several actions in respect of the same subject matter, when one will suffice.

APPLICANT'S CASE

The Applicant's case in sum is that the reliefs being sought in the Respondent's Originating Motion are virtually the same as those being sought in a prior suit filed by the 1st Applicant entitled **DOMINION PAINTS MANUFACTURING LIMITED v STEPHEN ADOM** in **SUIT NO E1/33/22**.

According to the Applicants, the Respondent had, in response to the said Application filed a Statement of Defence and Counterclaim (**Exhibit B**) by which the Respondent had alleged the same facts to wit, the fact that the 1st Applicant had through

force, coercion and undue influence fraudulently appointed a new CEO as Director of the 1st Applicant.

The Respondent had further alleged that the Board of Directors had not been properly constituted in accordance with law thereby rendering the Joint Venture Agreement ultra vires.

Again, the Respondent, similar to its depositions in the Originating Motion before this Court had further averred that resolutions and the change in directorship of the 1st Applicant had been procured through fraudulent means.

The Respondent in its Counterclaim in **SUIT NO E1/33/22** had proceeded to seek the following reliefs;

- i) *A declaration that the confusion and tension between the parties has become too high and not conducive for safe and effective and efficient business operations.*
- ii) *A declaration that the Quick Angels Partners of the Plaintiff Company (Ist Applicant) not having discharged its obligations of injecting the required US \$ 300,000 into the company cannot be said to be a majority shareholder*
- iii) *A declaration that any allotment and registration of shares in the name of Quick Angels Ltd and or in the personal name of Richard Nii Armah Quaye is void and of no legal effect.*
- iv) *A declaration that Quick Angels Ltd partners of the Plaintiff Company have acted fraudulently, viciously*

and in bad faith to the detriment of the Defendant's interest (Respondent) in the Joint Venture Agreement

- v) *An order of the Court directed at the management of the Plaintiff Company (1st Applicant) to take account for the company's assets to render account (for the business operations from 2nd July 2019 to date) and for the dissolution of the Joint Venture Agreement.*
- vi) *An order of the Honourable Court directed at the Registrar General's Department Accra to expunge all records indicating any registration of a reconstituted Dominion Paints Manufacturing Limited and to restore the shareholdings and the names of the directors of the original incorporation of Dominion Paints Manufacturing Industries Limited dated the 3rd of December, 2018.*
- vii) *An order of the Court directed at the management of the Plaintiff Company to cause proper books of account to be prepared and audited on the operations of the business from 2nd July 2019 to date.*
- viii) *An order of the Court directed at Quick Angels Ltd partners of the Plaintiff Company to pay to the Defendant the sum of **Five Million Ghana Cedis (GH¢ 5,000,000.00)** being damages for fraud, defamation and the frustration of Defendant's proprietary and financial interest in Plaintiff Company.*

Applicant says that a careful reading of the Counterclaim will reveal that the reliefs sought in **Suit No E12/33/2022** are indeed the same as those being sought in the action before this

Court. This is because the reliefs sought in both processes seek to:

- a) *Challenge the processes followed in appointing the 3rd, 4th and 5th Applicants as officers of the 1st Applicant Company and to remove them as officers.*
- b) *Change of the directors and officers of the 1st Applicant Company.*
- c) *Rectify the records of the 1st Applicant by reverting to the previous shareholding and directorship of 1st Respondent Company before the 2nd Applicant and Respondent entered into the Joint Venture Agreement.*

The Applicant contends that the Respondent's Originating Motion has been brought in bad faith as the same seeks to circumvent certain Orders made by the Court in **Suit No E1/33/2022** as evidenced by Rulings attached as **Exhibits C** and **D** and should therefore be dismissed by this Court.

RESPONDENT'S CASE

The Application is vehemently opposed. Respondent's case is that the current action is entirely different in nature from that commenced by the Applicants in **Suit No E1/33/2022**. He says the reliefs sought in either suit clearly reveal that the issues sought to be litigated in the present action and those in **Suit No E1/33/2022** are not the same.

He further contends that the instant action simply seeks judicial intervention to halt certain irregular acts or actions of the 1st

Applicant and to uphold the provisions of **Act 992** and the regulations of the 1st Applicant Company.

Now, **Order 11 Rule 18 (1) (d)** of **the High Court Civil Procedure Rules, 2004, (CI 47)** empowers this Court to strike out any pleading or anything in any pleading (depositions in the instant case) on grounds of the same being an abuse of process.

Now, what does the term “abuse of process” connote?

The learned authors of **Bullen & Leake & Jacobs [18th Edition]** provide some guidance in this regard. They make the following observation at page 148 of their book;

“The term “abuse of process of the court” is a term of great significance. It connotes that the process of the court must be carried out properly honestly and in good faith; and it means that the court will not allow its function as a court of law to be misused but will in a proper case, prevent its machinery from being used as a means of vexation or oppression in the process of litigation. It follows that where an abuse of process has taken place, the intervention of the court by the stay or even dismissal of proceedings “although it should not be lightly done, yet it may often be required by the very essence of justice to be done”

It follows therefore that a Court has expansive powers to intervene and to halt any process or proceeding that is found to be an abuse of its processes or legal machinery. The

circumstances under which a Court may exercise such powers is clearly not exhaustive and may be invoked in every circumstance where a litigant resorts to the improper use of the judicial process.

In order to determine whether or not there is any merit in the contentions of the Applicants, I think it should be necessary to take a critical look at the reliefs being sought by the Respondent in its Originating Motion. By the said Motion, Respondent seeks;

- a) *An order of injunction restraining the 1st Applicant from holding out the 3rd and 4th Applicants herein as directors of the Company.*
- b) *An order of injunction restraining the 1st Applicant from holding out the 4th Applicant as Secretary of the Company.*
- c) *An order of injunction restraining the 1st Applicant from holding out the 5th Respondent as Chief Executive Officer of the 1st Applicant Company*
- d) *A declaration that the appointment of 3rd Applicant as director of 1st Applicant is void for non-compliance with the regulations of the 1st Applicant and the provisions of Act 992.*
- e) *A declaration that Resolution dated 21st December, 2020 purportedly passed by the 1st Applicant appointing the 4th Applicant as a director of the 1st Applicant is void for non-*

compliance with the regulations of the 1st Applicant and the provisions of Act 992.

f) A declaration that the Resolution dated the 21st of December, 2020 purportedly passed by the 1st Applicant removing Shiela Afoley Odai as a director of the 1st Respondent is void for non-compliance with the regulations of the 1st Applicant and the provisions of Act 992.

g) A declaration that a Shareholder Special Resolution dated the 21st of December, 2020 purportedly passed by the 1st Applicant removing Shiela Afoley Odai and appointing the 4th Applicant as Secretary of the 1st Applicant is void for non-compliance with the regulations of the 1st Applicant and the provisions of Act 992.

h) A declaration that the appointment of the 5th Applicant as Chief Executive Officer of the 1st Applicant is void for non-compliance with the regulations of the 1st Applicant and the provisions of Act 992.

I must say that, I find much force in the argument of the Applicants that the action instituted in this Court seeks essentially the same reliefs being sought by the Respondent in his Counterclaim in **Suit No E1/33/2022**. That is, a reversal of the appointments of the current Officers of the 1st Applicant.

The fact that the same have been re-worded and “resplendently dressed” as an Application premised on **Section 218** of **Act 992** does not change this fact.

The Respondent in the written submissions filed on his behalf by Counsel contends that the Applicants’ claims are untenable as the parties and the issues raised in the present action are not the same as those in **Suit No E1/33/2022**.

Now, even if this argument of the Respondent is accepted, I think the pertinent question to ask is whether the main issues for determination are common to both actions and can be conveniently heard and determined by the same Court? I think this question must be answered in the affirmative. Indeed apart from the Respondent’s prayer for account in **Suit No E1/33/2022**, I find that the reliefs being sought by the Respondent in both suits are in substance, the same.

Both principle and authority point to the fact that the filing of two actions when one will suffice constitutes an abuse of the legal machinery since it puts a party’s adversary through long, unnecessary and expensive litigation. See the case of **ANYIMAH v KODIA 1V [1962] 2 GLR 1**.

This position is further buttressed by the rule in **HENDERSON V HENDERSON, [1843] 3 HARE 100 67 ER 313**, which admonishes parties, when a matter becomes the subject of litigation between them in Court of competent jurisdiction, to bring their whole case before the Court so that all aspects of it may be finally decided once and for all .

I am unable to accept the Respondent's contention that the substance of his action before this Court does not in any way affect the issues that fall to be litigated in **Suit No E1/33/2022**. To ascertain the soundness of this assertion, one does not even need to delve into the merits of the suit. One only needs to consider **Exhibit D** which is an Order of Interlocutory Injunction of the Court in **Suit No E1/33/2022**, restraining the Respondent from interfering with the day to day management of the 1st Applicant Company.

Against the backdrop of the said Order, the difficulty that could arise from a grant of the reliefs endorsed on the Respondent's Originating Motion can be well imagined. Entertaining the Respondent's motion could no doubt lead to the same Court (differently constituted) giving conflicting decisions on the same subject matter. This situation should not be encouraged.

In my considered opinion, the Respondent's "**Motion for an Order for Injunction and Declaration of Nullity under Section 218 of the Companies Act, 2019 (Act 992)**" is an action that could have been avoided without any prejudice to his rights as it relates to grievances that can properly be ventilated before the Court in **Suit No E1/33/2022**.

It is for this reason that the Applicants' prayer is granted as prayed.

Accordingly, the depositions in **Paragraphs 5 to 23** which constitute the pith of the Respondent's case are hereby struck out on grounds of the same being an abuse of process and the Respondent's action dismissed.

I award the Applicants costs of **Two Thousand Ghana Cedis (GH¢ 2,000.00)**.

(SGD)

AKUA SARPOMAA AMOAH (MRS.)

JUSTICE OF THE HIGH COURT

Cases referred to:

DOMINION PAINTS MANUFACTURING LIMITED v STEPHEN ADOM in SUIT NO E1/33/22.

ANYIMAH v KODIA 1V [1962] 2 GLR 1.

HENDERSON V HENDERSON [1843] 3 HARE 100 67 ER 313,

Statutes referred to:

The **Companies Act, 2019 (Act 992)**.

The High Court Civil Procedure Rules, 2004, (CI 47)

Stated edition:

Bullen & Leake & Jacobs [18th Edition]