

IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT OF JUSTICE,
PROBATE AND L/A DIVISION, COURT '1' HELD IN ACCRA ON 17TH OCTOBER
2023 BEFORE HER LADYSHIP EUDORA CHRISTINA DADSON, HIGH COURT
JUDGE.

SUIT NO. PA/0505/2022

1. CHARLENE DIONNE MAXWELL }
H/NO. 45 JOSIAH TONGOGARA STREET }
NORTH LABONE – ACCRA }

(SUING AS EXECUTOR AND TRUSTEE OF THE ESTATE }
OF JANET SNOWDEN MAXWELL) }

2. NINA MAXWELL }
3. BRIANNA MAXWELL }...PLAINTIFFS
(SUING PER HER GUARDIAN AD LITEM }/APPLICANTS
CHARLENE DIONNE MAXWELL) }

BOTH OF NO. 13809 }
LONGACRES PRESERVE COURT }
POTOMAC MD 20854 USA }

VRS

1. A.T. ADDY }
OAK FINANCIAL SERVICES }
ACCRA }

2. EMMANUEL NII BOI ABBEY }
H/NO. 17 COMMUNITY 18 ROAD }...DEFENDANTS
BAATSONA }/RESPONDENTS

(BOTH BEING SUED AS EXECUTORS AND TRUSTEES }
OF THE ESTATE OF JANET SNOWDEN MAXWELL) }

SUIT NO. PA/0857/2022

1. CHARLENE DIONNE MAXWELL }
H/NO. 45 JOSIAH TONGOGARA STREET }
NORTH LABONE – ACCRA }

(SUING AS EXECUTOR AND TRUSTEE OF THE ESTATE }
OF JANET SNOWDEN MAXWELL) }

2. NINA MAXWELL }

3. BRIANNA MAXWELL }...PLAINTIFFS

(SUING PER HER GUARDIAN AD LITEM }
CHARLENE DIONNE MAXWELL) }

BOTH OF NO. 13809 }
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1. A.T. ADDY }
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H/NO. 17 COMMUNITY 18 ROAD }...DEFENDANTS

BAATSONA }
(BOTH BEING SUED AS EXECUTORS AND TRUSTEES }
OF THE ESTATE OF JANET SNOWDEN MAXWELL) }

CONSOLIDATED SUITS

PARTIES: ABSENT

**COUNSEL: AMINA ALI ISSAKA HOLDING BRIEF FOR DANIYAL ABDUL-
KARIM FOR THE 1ST PLAINTIFF/RESPONDENT PRESENT
JOSHUA BOOWURO HOLDING BRIEF FOR SAMUEL CODJOE FOR
THE DEFENDANTS/APPLICANTS PRESENT
AKOTO AMPAW FOR 2ND & 3RD PLAINTIFFS/RESPONDENT
ABSENT**

**RULING ON MOTION TO AMEND THE STATEMENT OF DEFENCE AND
COUNTERCLAIM- SUIT NO:PA/0857/2022**

[1] Introduction

Order 16 Rule 5 of CI 47 provides as follows:

5. *Amendment of writ or pleading with leave*

(1) *Subject to Order 4 rules 5 and 6 and to the following provisions of this rule, the Court may at any stage of the proceedings upon an application by the plaintiff or any other party grant leave to*

(a) *the plaintiff to amend the plaintiff's writ; or*

(b) any party to amend the party's pleading;

on such terms as to costs or otherwise as may be just and in such manner as it may direct.

(2) Where an application to the Court for leave to make the amendment mentioned in subrule (3), (4) or (5) is made after any relevant period of limitation has expired, the Court may nevertheless grant the leave in the circumstances mentioned in that application if it considers it just to do so.

(3) An amendment to correct the name of a party may be allowed under subrule (2) notwithstanding that it is alleged that the effect of the amendment will be to substitute a new party if the Court is satisfied that the mistake sought to be corrected was a genuine mistake and was not misleading or such as to cause any reasonable doubt as to the identity of the person intending to sue or intended to be sued.

(4) An amendment to alter the capacity in which a party sues may be allowed under subrule (2) if the new capacity is one which that party had at the date of the commencement of the proceedings or has since acquired.

(5) An amendment may be allowed under subrule (2) notwithstanding that the effect of the amendment will be to add or substitute a new cause of action, if the new cause of action arises out of the same facts or substantially the same facts as a cause of action in respect of which relief has already been claimed in the action by the party applying for leave to make the amendment”.

The learned Author, S. Kwami Tetteh in his invaluable book, Civil Procedure, A Practical Approach, page 442 writing under the heading amendment stated as follows:

*Judges and lawyers, like other professionals make mistakes. The Rules provided a liberalized procedure for correcting errors that may be made by the judge or party in the course of the proceeding. The procedure is based on the broad recognition that mistakes are unavoidable in litigation but must not be allowed to stultify the proceedings. The overriding objective of the Rules in this regard is for the **beneficial utilization of the rules for amendment in order to attain***

expeditious, effective, complete and final adjudication, avoiding multiplicity of proceedings concerning the same subject-matter (emphasis mine).

The following amendments may be disallowed if the circumstances so warrants:

- i. Altering the plaintiff's capacity in the writ
- ii. Substituting a party or
- iii. introducing a fresh relief outside the relevant limitation period
- iv. introducing a cause of action not founded upon facts upon which a relief has been claimed in the action

[2] Brief Facts

The Defendants/Applicants hereinafter referred to as "the Applicants" filed a motion on notice for amendment of the Defendants' Statement of Defence and Counterclaim on 22nd June 2023 by deleting paragraphs 9, 10, 12, 14, 23, 26, 34, 58 and 59 and substituting the said paragraphs with proposed new paragraphs.

The Applicant in a 9-paragraph affidavit in support deposes that the amendment being sought to include certain facts which are material to their case in terms of the motion paper. The omitted facts include the fact that Plaintiff has unlawfully retained the keys to seven (7) immovable properties and not six (6) immovable properties. The 2nd Defendant deposed that they wrongly stated that a Scholarship Fund is a Trust when in fact it is not.

It is the case of the 1st Defendant that having reviewed the facts it has become necessary that they amend the said paragraphs of the Statement of Defence and Counterclaim in terms of the motion paper and that since hearing has not commenced the Plaintiffs/Respondents will not suffer any harm by the amendment to the Statement of Defence and Counterclaim

[2.1] Affidavit in opposition

The 1st Plaintiff/Respondent hereinafter referred to as "the Respondent" filed an affidavit in opposition on 11th July 2023. The 1st Respondent deposed that the application brought

by the Applicant is premature having regards to the assignment given the Auditor by the Court among other grounds. The 1st Respondent states that she shall oppose any amendment affecting admissions already made by Applicants as well as findings and decisions contained in the interlocutory rulings of this Court, which rulings have not been challenged by Applicants.

It is the case of the 1st Respondent that the proposed amendments relating to the principle of unanimity as suggested in paragraph 23 of the proposed Amended Statement of Defence are objectionable on the grounds that they are not being made in good faith, having regard to decisions already rendered by this Court following submissions of the parties and admissions made by Applicants.

[3] Courts analysis and Opinion

Counsel for Plaintiff/Respondent in responding to the application informed the Court that they have withdrawn their opposition.

This is a matter where the need to expedite trial must also be balanced with the need to achieve substantial justice. Application for directions has been taken the parties have been given timelines to file their witness statements and proposed exhibits.

Should the stage of the proceedings disable the Defendants from seeking leave of the Court to amend their pleadings? I do not think so.

In the case of *IN RE ASHALLEY BOTWE LANDS; ADJETEY AGBOSU & OTHERS v KOTEY & OTHERS* [2003-2004] 1 SCGLR 420 at 434 Wood JSC as she then was delivered herself thus:

“upon application for leave to amend, the defendants themselves who were the persons to be directly affected by the order sought, expressly stated that they were not opposed to the grant... True the courts are in an equally good position to assess other critical factors like whether or not the proposed amendment would cause undue delay or was irrelevant. But such matters as the proposed amendment would result in surprise, injustice or prejudice; or that it would jeopardise the respondent’s case or even more importantly, that it would enable the applicant to

set up an entirely new case or completely change the nature of his or her case, in the normal run of things should be raised by the opponent if, indeed such were the case”.

In order to attain expeditious, effective, complete and final adjudication, avoiding multiplicity of proceedings concerning the same subject-matter the motion filed on 21st June 2023 is granted as prayed. *Adjeley vs Sowa* [1966] GLR 954 applied.

The Defendants/Applicants are granted leave to amend the Statement of Defence and Counterclaim in terms of the proposed amendment in the motion paper and attached Exhibit A the court taking note of the abandonment of relief 137(f) only within 7 days of this ruling. Upon due service on the Plaintiffs, if the Plaintiffs are minded to amend their reply they also have 7 days to amend. No order as to costs.

(SGD.)

H/L EUDORA CHRISTINA DADSON (MRS.)

JUSTICE OF THE HIGH COURT