

IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT OF JUSTICE, SESSION HELD AT SEFWI WIAWSO IN THE WESTERN NORTH REGION ON TUESDAY THE 18TH DAY OF APRIL 2023 BEFORE HIS LORDSHIP JUSTICE KWAME AMOAKO

SUIT NO.:- E12/16/2017

PETER NKRUMAH ADASAH - PLAINTIFF

V

CHIRANO GOLD MINES LTD (KINROSS) - DEFENDANT
CHIRANO

Plaintiff present

Defendant absent

Emmanuel Arthur for Nana Sekyere Boateng for Plaintiff present

Philip Obeng Nyarko for Kimathi Kuenyehia for the Defendant present

JUDGMENT

Per the Amended Writ of Summons filed on 22nd June 2017, the Plaintiff claims against the Defendant and four others jointly and severally as follows:

- a) A declaration that the 1st Defendant is vicariously liable for acts of the 2nd Defendant in the course of the 2nd Defendant performing his duties as an employee/servant of the 1st Defendant and the 4th Defendant is vicariously liable for torts committed by the 3rd Defendant whenever the 3rd Defendant acts arise or omissions out of or in the cause of his employment with the Ghana Police Service.

- b) A declaration that the arrest and prosecution of the Plaintiff by the 3rd Defendant on the order/instruction or complain from the 1st and 2nd Defendants was wrongful, ill motivated, capricious, unreasonable, out of resentment and malicious.

- c) An order of the Court directing the defendants to pay GH¢1,000,000 as compensation to the Plaintiff for his wrongful arrest, detention and malicious prosecution.

- d) Any other order (s) the Court deems fit to make.

The action has since been discontinued against the other four Defendants.

The Terms of the Settlement is reproduced as follows:

IN THE HIGH COURT OF JUSTICE
SEFWI WIAWSO, WESTERN NORTH REGION
TERMS OF SETTLEMENT AND GENERAL RELEASE
BETWEEN

PETER NKRUMAH ADASAH

AND

CHIRANO GOLD MINES LTD.

TERMS OF SETTLEMENT AND GENERAL RELEASE

THESE TERMS OF SETTLEMENT AND GENERAL RELEASE (the "Agreement")

are made and

entered into on this ____ day of January 2023;

BETWEEN

1. **PETER NKRUMAH ADASAH** ("Peter Nkrumah"), of
H/No. CH34/1, Chirano on the one hand; and

2. **CHIRANO GOLD MINES LTD** ("Chirano"), incorporated
and existing under the laws of Ghana with its registered
office address at 2nd Floor, Office 1, Marvel House, No.
148 A, Giffard Road, Cantonments, Accra, on the other
hand;

together the "Parties", and each a "Party".

WHEREAS:

A. The Parties are engaged in judicial proceedings at the High Court, in Sefwi-Wiawso, administered under **Suit Number E12/16/2017** in which Peter Nkrumah sued Chirano, Bethwal Sarpong Boadi Mensah, C/Insp. Stephen Boakye Tuffour, the Inspector General of Police and the Attorney-General for the following:

I. A declaration that Chirano is vicariously liable for the acts of Bethwal Sarpong Boadi Mensah in the course of Bethwal Sarpong Boadi Mensah performing his duties as an employee/servant of Chirano and the Inspector General of Police is vicariously liable for torts committed by C/Insp. Stephen Boakye Tuffour whenever C/Insp. Stephen Boakye Tuffour's acts or omissions arise out of or in the course of his employment with the Ghana Police Service.

II. A declaration that the arrest and prosecution of Peter Nkrumah by C/Insp. Stephen Boakye Tuffour on the order/instruction or complain from Chirano and Bethwal Sarpong Boadi Mensah was wrongful, ill motivated,

capricious, unreasonable, out of resentment and malicious.

III. An order of the Court directing Chirano to pay GHS 1,000,000.00 as compensation to Peter Nkrumah for his wrongful arrest, detention and malicious prosecution.

IV. Any other order(s) as the Court deems fit to make.

(Hereinafter the "**Dispute**".)

B. The Parties have agreed to a settlement regarding the Dispute without conceding the merit of their respective positions.

C. The Parties do not acknowledge any liability in the Dispute by entering into this Agreement.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which Peter Nkrumah acknowledges, and intending to be legally bound, the Parties hereby agree as follows.

1. DEFINITIONS AND INTERPRETATION

1.1 . Definitions

In this Agreement, unless the context otherwise requires, the following terms shall have the meanings given to them under this section:

"Agreement" means these Terms of Settlement and General Release between Peter Nkrumah Adasah and Chirano Gold Mines Ltd;

"Dispute" shall have the meaning given to it under Recital A above;

"Effective Date" means the date on which the last Party executes this Agreement;

"High Court" means the High Court, Sefwi Wiawso;

"Released Parties" means Chirano and all of its affiliates, successors, subsidiaries, officers, directors, shareholders, partners, predecessors and successors in interest, heirs, assigns, attorneys, agents, servants, representatives, employees, insurers, parent companies and/or corporations; and

"Settlement Consideration" shall have the meaning provided in Clause 3.

1.2. Interpretation

In this Agreement, unless otherwise specified or the context otherwise requires:

1.2.1. Words importing the singular only shall include the plural and vice versa;

1.2.2. The descriptive headings used are for ease of reference only and are not intended to be part of or to affect the meaning, interpretation and construction of this Agreement;

1.2.3. The recitals from part of this Agreement and shall have the same force and effects as if set out in the body of this Agreement;

1.2.4. Reference to a provision of law is a reference to that provision as extended, applied, amended, consolidated, or re-enacted; and

1.2.5. A business day means any day which is not a Saturday, a Sunday or a public holiday in the Republic of Ghana on which banks are open for commercial business.

2. NO ADMISSION

2.2. Nothing in this Agreement, or any other document executed by the Parties in connection with this Agreement, or any related negotiations shall be construed or used in evidence by any Party as an admission of any liability or wrongdoing on the part of any Party in respect of the matters agreed herein.

2.3. Peter Nkrumah understands and agrees that nothing contained in this Agreement shall be deemed to constitute an admission or evidence of any wrongdoing or liability on the part of Chirano or that Chirano violated any law.

3. SETTLEMENT CONSIDERATION

3.1. In consideration of the general release set forth in this Agreement, the Parties agree that Chirano shall within 7 business days after the High Court's adoption of this Agreement as a consent judgment of the Parties:

- a. Pay to Peter Nkrumah a total sum of GHS 112,500.00 (One Hundred and Twelve Thousand, Five Hundred Ghana Cedis Only) by way of bank transfer to the bank details set forth in Clause 3.2;

b. Pay to Counsel for Peter Nkrumah a total sum of GHS 12,500.00 (Twelve Thousand, Five Hundred Ghana Cedis Only) by way of bank transfer to the bank details set forth in Clause 3.3; and

c. Bear all taxes in relation to the payment of the amount referred to in Clause 3.1 (a) and (b) above.

(the "**Settlement Consideration**").

3.2. Peter Nkrumah's bank details are as follows:

Bank: UNIVERSAL MERCHANT BANK

Account Name: NKRUMAH PETER ADASA

Account Number: 0072263160011

Branch: BIBIANI BRANCH

3.3. Counsel for Peter Nkrumah's bank details are as follows:

**Bank: CONSOLIDATED BANK GHANA
LIMITED**

Account Name: NANA SEKYERE BOATENG

Account Number: 0603774600002

Branch: TECHIMAN WENCHI ROAD BRANCH

3.4. Peter Nkrumah understands and agrees that the commitments herein are being provided for the covenants undertaken, waivers given, and the general releases contained in this Agreement.

3.5. Peter Nkrumah undertakes and agrees that he shall not under any circumstance disclose any aspect of this Settlement Consideration, this Agreement, or any aspect of this Agreement to any third party.

4. GENERAL RELEASE AND DISCHARGE

4.1. Subject to Chirano's execution of the undertakings set forth in **Clause 3** of this Agreement, Peter Nkrumah hereby irrevocably, completely and unconditionally releases, acquits and forever discharges Chirano and all of its affiliates, successors, subsidiaries, officers, directors, shareholders, partners, predecessors and successors in interest, heirs, assigns, attorneys, agents, servants, representatives, employees, insurers, parent companies and/or corporations (the "**Released Parties**") from any and all past, present and future claims, demands, obligations, actions, causes of action, rights, damages, costs, loss of income, expenses and compensation of any nature whatsoever or any cause of action based on

equity, statute or other theory of recovery, which Peter now has.

4.2. The Parties agree that this Agreement shall be a complete, final and full settlement of the Dispute between them.

4.3. Peter Nkrumah agrees that he has accepted the Settlement Consideration as a complete and final settlement of all matters which may be disputed based on law and/or fact and Peter Nkrumah assumes the risk that the facts and/or law may be other than he believes.

5. CONSENT JUDGMENT

The Parties shall present this Agreement to the High Court for adoption by the High Court as a consent judgment of the Parties.

6. AUTHORITY

6.1. Each Party represents and warrants to the other Party as follows.

6.1.1. The execution, delivery and performance of this Agreement by such Party has been duly

authorised by all necessary action on the part of such Party under applicable law and its internal procedures; and

6.1.2. This Agreement, when executed and delivered by such Party in accordance with its provisions, shall be valid and binding on such Party under applicable law and shall be enforceable against such Party in accordance with its terms.

6.2. The Parties acknowledge and agree that in entering into this Agreement, each Party is relying on the representations and warranties given by the other Party under this Clause.

7. COSTS

Each Party shall bear its own costs in connection with the Dispute, the preparation and execution of this Agreement, and all related discussions and negotiations.

8. GOVERNING LAW AND DISPUTE RESOLUTION

8.1. This Agreement shall be construed and interpreted in accordance with the laws of the Republic of Ghana.

8.2. Any dispute arising out of or in connection with this Agreement, including any question regarding its existence, validity, or termination, the legal relationships established by this Agreement or the consequences of its nullity, shall be referred to and finally resolved by the courts in Ghana with competent jurisdiction and the judgment of the court will be conclusive, binding and enforceable against either Party.

9. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the Parties in relation to the matters set out herein and supersedes all prior agreements or understandings between the Parties.

10. CONFIDENTIALITY

The terms of this Agreement, and the substance of all negotiations in connection with this Agreement, are confidential to the Parties, their lawyers and advisers who shall not disclose them to any third party without the written consent of the other Party.

11. SEVERANCE

If any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions shall remain in full effect.

12. SUCCESSORS IN INTEREST

This Agreement shall be binding upon and inure to the benefit of the Parties and their successors.

12. ADDITIONAL DOCUMENTS

The Parties agree to cooperate fully and execute any and all supplementary documents and to take all additional actions that may be necessary or appropriate to give effect to the terms, spirit and intent of this Agreement.

14. AMENDMENT

The Parties agree that this Agreement shall not be modified, altered or changed except by a written agreement signed by both Parties.

15. COUNTERPARTS

This Agreement may be executed in counterparts. Each counterpart so executed shall be deemed as an original, but

all such counterparts shall together constitute one and the same Agreement.

IN WITNESS WHEREOF this Agreement has been executed on the date stated at the beginning.

The Court is required by law to promote reconciliation through Alternative Dispute Resolution (ADR) means in appropriate cases.

Section 72 of the Courts Act, 1993 (Act 459) deals with promotion of reconciliation in civil cases and provides as follows:

“(1) A Court with civil jurisdiction and its officers shall promote reconciliation, encourage and facilitate the settlement of disputes in an amicable manner between and among persons over whom the Court has jurisdiction.

(2) When a civil suit or proceeding is pending, a Court with jurisdiction in that suit or proceeding may promote reconciliation among the parties, and encourage and facilitate the amicable settlement of the suit or proceeding.”

However, in promoting reconciliation of cases, the Court is required to be mindful of matters that the statute specifically prohibits their amicable settlement and also of agreed Terms which are prohibited at common law or cannot otherwise be settled by an alternative dispute resolution method.

On civil causes or matters that cannot be settled in an amicable manner, *section 1 of the Alternative Dispute Resolution Act, 2010 (Act 798)* provides as follows:

“1. This Act applies to matters other than those that relate to

(a) the national interest;

(b) the environment;

(c) the enforcement and interpretation of the Constitution; or

(d) any other matter that by law cannot be settled by an alternative dispute resolution method.”

This is an action in torts. Obviously, this case does not relate to the national interest, the environment or the enforcement or interpretation of the Constitution. This Court is also not aware of any law that prohibits the amicable settlement of this matter.

Therefore, this is a matter that is amenable to alternative dispute resolution within the meaning of *section 1 of Act 798*. Accordingly, the prayer by the Parties for the Terms of Settlement filed to be adopted by this Court as its consent Judgment ought to be granted in accordance with *section 72 of Act 459*.

Conclusion

The Terms of Settlement duly executed by the Parties herein are hereby adopted as the consent Judgment of this Court. This case is disposed of accordingly.

This Court extends its profound appreciation to the Lawyers in this case, namely Lawyer Nana Sekyere Boateng (for the Plaintiff) and Lawyer Kimathi Kuenyehia (for the Defendant) for their respective roles in the Settlement process.

This Court makes no order as to cost.

H/L KWAME AMOAKO

JUSTICE OF THE HIGH COURT