IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT OF JUSTICE COMMERCIAL DIVISION, HELD IN ACCRA ON MONDAY, THE 6TH DAY OF MAY, 2024 BEFORE HIS LORDSHIP FRANCIS OBIRI 'J'

SUIT NO. CM/BDC/0219/2023

INTERCONTINENTAL GROUP (GH) LTD - PLAINTIFF/RESPONDENT

Vs

ZENITH BANK (GHANA) LIMITED - DEFENDANT/APPLICANT

RULING

On 19th January 2024, the Defendant/Applicant (hereinafter called the Applicant) filed a motion before the court. The motion is praying the court to strike out the Plaintiff/Respondent (hereinafter called the Respondent) pleadings and dismiss the instant suit for non-disclosure of reasonable cause of action pursuant to the inherent jurisdiction of the court.

The motion is supported by affidavit. The relevant paragraphs are as follows:

6. That the Respondent issued Writ of Summons and Statement of Claim on 13th January 2023, against the Applicant claiming the following reliefs:
    a. A declaration that the Applicant Bank owes the Respondent a duty of care and which duty has been breached.
    b. Interest on the sum of US$425,461.5 at the commercial rate from 7th December 2022, until the date the sum of US$425,461.5 was remitted to Respondent's business partners in Russia.
    c. General damages.
    d. Cost.

7. That the Applicant filed Statement of Defence on 3rd February 2023, and subsequently filed an amended Statement of Defence on 7th November 2023, pursuant to an order of this court dated, 1st November 2023.
8. That a careful perusal of the Respondent's reliefs show that the Respondent's action is based on negligence.
9. That a perusal of the entirety of the Respondent's pleadings do not support an action for negligence.
10. That the jurisprudence of the Superior Courts is that in an action founded on negligence, the plaintiff must prove that defendant owed it a duty of care, that the said duty has been breached and that there has been a resultant damage.
11. That the Respondent has not pleaded any fact or made any allegation which suggests that the Applicant indeed owed a duty of care under these peculiar circumstances, breached the said duty of care and resultant damage has been caused.
12. That the Respondent has not pleaded any fact or made any allegation, which suggests that the Applicant is liable for the tort of negligence.
13. That the Respondent does not have any cause of action against the Applicant.
14. That the jurisprudence of the Superior Courts is that in an action or claim for negligence, the Plaintiff must plead the full particulars of the negligence.
16. That the failure to give particulars is fundamental and goes to the root of the suit, such that it warrants this Honourable court to dismiss the matter for non-disclosure of cause of action.
17. That the jurisprudence of the Superior Courts is that where a Plaintiff in an action for negligence fails to give particulars of the negligence, the claim cannot be established.
18. That assuming without admitting that the Respondent gave the particulars, same would not lead to a claim of negligence against the Applicant.

19. That the jurisprudence of the Superior Courts is that if a plaintiff will not be entitled to his reliefs, even if his allegations were assumed to be true, the court ought to dismiss the action for non-disclosure of cause of action.

20. That even if this Honourable Court assumed that all the Respondent's pleadings are true, the Respondent will still not be entitled to any of the reliefs it is seeking.

29. That since the Statement of Claim does not disclose any facts/allegations to find a claim for negligence, the Respondent has no reasonable cause of action against the Applicant.

30. That considering that the Respondent's own pleadings fail to support the existence of negligence, paragraphs 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17 and 18 of the Statement of Claim have to be struck out, and the instant action consequently ought to be dismissed for non-disclosure of cause of action.

The Respondent opposed the application by filing affidavit in opposition on 2nd February 2024. The relevant paragraphs are as follows:

3. That Defendant/Respondent has been served with a motion on notice to strike out pleadings and dismiss Plaintiff's suit for non-disclosure of reasonable cause of action and the Plaintiff/Respondent is opposed to same.

4. That at the hearing of the application, counsel for the Plaintiff/Respondent shall refer to all processes filed and raise a preliminary legal objection.

5. That paragraph 7 is admitted and the Plaintiff/Respondent would add, that pleadings have closed, pre-trial conference concluded, and issues have been set down for parties to appear before the trial judge.

6. That Plaintiff/Respondent is advised and it perfectly believes same to be true, that all the depositions contained in paragraphs 8, 9, 10, 11, 12, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29 and 30 of the affidavit in support of the motion are sub judice.

7. That the Plaintiff/Respondent is further advised and it believes same to be true, that even before the trial judge assumes jurisdiction over the matter, the

Defendant/Applicant has engaged in approbation and reprobation of the issues pending before a court of competent jurisdiction.

8. That the Plaintiff/Respondent is again advised and it believes same to be true, that this application is without merit in law but a ploy by the Defendant/Applicant to delay the determination of this case.

I had opportunity to listen to the submissions for and against the application.

Counsel for the Applicant submitted, that the application should be granted and the Respondent's pleadings strike out and the Writ of Summons dismissed for not disclosing reasonable cause of action. Counsel for the Respondent contended otherwise, and prayed the court to dismiss the application and hear the case on its merits.

It is now my duty to make a determination one way or the other.

The Applicant's contention in this application is that the Respondent's action does not disclose any cause of action against it. The Respondent contends otherwise, as I have stated earlier.

A cause of action has been defined as a factual situation the existence of which would entitle one person to obtain from the court a remedy against another person. The phrase, cause of action also includes every fact which is material to be proved to entitle the plaintiff to succeed, and every fact which the defendant would have a right to traverse. Cause of action also means, the particular act of the defendant which gives the plaintiff his cause of complaint.

See: AMPRATWUM MANUFACTURING CO. LTD. v DIVESTITURE IMPLEMENTATION COMMITTEE [2009] SCGLR 692

JOHN MAHAMA v ELECTORAL COMMISSION AND NANA ADDO DANKWA AKUFO-ADDO [2021] 171 GMJ 473 SC

IN RE MENSAH (DECD); MENSAH AND SEY v INTERCONTINENTAL BANK [2010] SCGLR 118

MADAM RANDI LARTEY & 2 ORS v YAW ABOAH DJIN & ANOR [2022] 177 GMJ 89 SC

Every party before suing must satisfy himself, that he has a cause of action at the time of the institution of the action against his opponent upon which a relief can be granted.

See: REPUBLIC v HIGH COURT SUNYANI; EX PARTE COLLINS DAUDA (BOAKYE-BOATENG – INTERESTED PARTY) [2009] SCGLR 447

NEW PATRIOTIC PARTY v NATIONAL DEMOCRATIC CONGRESS AND OTHERS [1999-2000] 2 GLR 506 SC

If a party has no cause of action against his opponent, then, his action cannot properly invoke the jurisdiction of the court for the court to determine the merits of the case.

Jurisdiction has been defined as the authority which a court has to decide matters which are litigated before it, or to take cognizance of matters presented before it in a formal way for its decision. The limits of this authority are imposed by statute, charter or commission under which the court is constituted, and may be extended or restricted by like means.

See: YEBOAH v MENSAH [1998-1999] SCGLR 492

EDUSEI (NO.1) v ATTORNEY-GENERAL AND ANOTHER [1996-97] SCGLR 1

EDUSEI (NO.2) v ATTORNEY-GENERAL [1998-99] SCGLR 753

Therefore, jurisdiction is determined by the real issues between the parties.

See: ANIN v ABABIO AND OTHERS [1973] 1 GLR 509

REPUBLIC v HIGH COURT ACCRA, EX PARTE ADDAE-ATCHEWEREBUO III AND OTHERS (ASARE BAAH III AND OTHERS-INTERESTED PARTIES), ATTORNEY-GENERAL AND ELECTORAL COMMISSION (THIRD PARTIES) [2010] SCGLR 359

The issue of a court's jurisdiction to entertain a matter is very central to every issue. That is why the court itself can raise it suo motu.

See: BIMPONG BUTA v GENERAL LEGAL COUNCIL [2003-2004] 2 SCGLR 1200

ANTHONY SAKYI v GA SOUTH MUNICIPAL ASSEMBLY [2022] 178 GMJ 216 CA

This is because, the court cannot behave like an octopus and stretch its tentacles for jurisdiction. The court cannot also behave like a midfield libero in football parlance who can surge forward and backwards and not restricted to any particular position on the field.

Therefore, even if a court on its own motion realises that a party's case does not disclose any reasonable cause of action, the court on its own can dismiss the action. This is because; the court is not bound by legal misconceptions from lawyers or parties.

See: GIHOC REFRIGERATION AND HOUSEHOLD PRODUCTS LIMITED (NO. 1) v HANNA ASSI (NO. 1) [2007-2008] 1 SCGLR 1

Again, a court must scrutinize every case to see whether its jurisdiction has been properly invoked. Consequently, a court is not even to grant an application hook, line, and sinker even if it is a one-sided unless, its jurisdiction has been properly invoked.

See: AMIDU (NO.1) v ATTORNEY-GENERAL, WATERVILLE (BVI) CO. LTD & WOYOME (NO.1) [2013-2014] 1 SCGLR 112

If a party's case has not properly invoked the jurisdiction of the court, then the court cannot proceed to determine the merits of the case, even if the party has a cast-iron case.

See: YORKWA v DUAH [1992-93] GBR 278 CA

It is also the law, that a judgment in law seeks to establish the rights of parties and declare any existing liabilities between the parties. Therefore, a court cannot discuss the merits of a case if there is no cause of action. It means the proper parties are not before court.

See: **ALFA MUSAH v FRANCIS APPEAGYEI [2019-2020] 1 SCLRG 606**

In this case, the Respondent Writ of Summons was filed on 13th January 2023. It was served on the Applicant on 13th January 2023 at 2:48 pm. The Applicant entered appearance on 23rd January 2023. The Applicant filed its defence on 3rd February 2023. On 26th July 2023, the Applicant filed motion on notice for leave to amend its defence. The motion was heard and granted on 1st November 2023. The Applicant filed the amended statement of defence on 7th November 2023.

Thereafter,the parties appeared before a pre-trial judge. However, the matter could not be settled amicably. Therefore, on 20th November 2023, seven issues were set down by the pre-trial judge for same to be determined by the trial court.

It was after the issues have been set down by the pre-trial judge that the Applicant filed the instant application that the Respondent pleadings should be strike out because, same do not disclose any reasonable cause of action against the Applicant.

The Applicant attached affidavit to the application.Counsel for the Applicant contended, that the application is under the inherent jurisdiction of the court.

However,C.I 47 has provided a procedure which must be followed when an Applicant is contending,that a Respondent's action does not disclose any reasonable cause of action and therefore should be dismissed.

The authorities have held, that where a statute such as C.I 47 has provided a right with remedies, and has also provided a procedure to follow in order to secure the right or the remedy, it is only that procedure which must be followed. And failure to follow the procedure will bereft the court with jurisdiction to entertain the matter or the application.

See: TULARLEY v ABAIDOO [1962] 1 GLR 411 SC

BOYEFIO v NTHC PROPERTIES LTD. [1997-1998] 1 GLR 768 SC

REPUBLIC v HIGH COURT, GENERAL JURISDICTION 5, ACCRA EX PARTE THE MINISTER FOR INTERIOR & ANOR (ASHOK KUMAR SIVARAM-INTERESTED PARTY) [2018] 122 GMJ 63 SC

THE REPUBLIC v CIRCUIT COURT, KUMASI EX PARTE KWABENA MENSAH [2019] 132 GMJ 86

REPUBLIC v HIGH COURT SEKONDI; EX PARTE PERKOH II [2001- 2002] 2 GLR 460 CA

It is only when a remedy has been provided, by law but a procedure has not been provided to achieve the said remedy that a party can invoke the inherent jurisdiction of the court. The law is settled, that where a statute provides a remedy, but does not prescribe the means by which the remedy would be attained, a party can approach a court for such remedy by any of the known process of approaching the court, such as by motion by way of invoking the inherent jurisdiction of the court.

See: REPUBLIC v CENTRAL REGIONAL HOUSE OF CHIEFS & ORS. EX PARTE GYAN ANDOH IX (ANDOH X- INTERESTED PARTY) [2013-2014] 2 SCGLR 845

The procedure provided under C.I 47 to pray a court to dismiss an opponent case for non-disclosure of reasonable cause of action and other reliefs has been provided under Order 11 rule 18 of C.I 47.

Order 11 rule 18(1) provides:

"The Court may at any stage of the proceedings order any pleading or anything in any pleading to be struck out on the grounds that

a. **It discloses no reasonable cause of action or defence; or**

b. It is scandalous, frivolous or vexatious; or

c. It may prejudice, embarrass, or delay the fair trial of the action; or

d. It is otherwise an abuse of the process of the Court:

and may order the action to be stayed or dismissed or judgment to be entered accordingly".

Order 11 rule 18 (2) also provides that;

"No evidence whatsoever shall be admissible on an application under subrule (1) (a)"

It is therefore clear that Order 11 rule 18 (1) provides the remedy or the relief whereas, Order 11 rule 18 (2) provides the procedure for attaining the remedy under Order 11 rule 8 (1) (a)

Therefore, if an applicant's application comes under the relief provided Order 11 rule 18 (1) (a) as in this case, then Order 11 rule 18 (2) applies where the party should not attach affidavit in support, contrary to what the Applicant did in this application.

Orders 19 rule 4 and 20 rule 1 of C.I 47 anticipate a situation where there can be a motion without the requirement of an affidavit, as provided for under Order 11 rule 18 (1) (a).

Order 19 rule 4 provides:

"Every application shall be supported by affidavit deposed to by the applicant or some person duly authorised by the applicant and stating the facts on which the applicant relies, unless any of these Rules provides that an affidavit shall not be used or unless the application is grounded entirely on matters of law or procedure which shall be stated on the motion paper".

Order 20 rule 1 also provides:

"An affidavit may be used wherever these Rules so provide".

Order 11 rule 18 (1) of C.I. 47 gives disjunctive reliefs because of the use of the preposition **or** after Order 11 rule 18 (1) (a), (b), (c) and (d).

It is trite law, that the courts are servants of the law. Therefore, no court can grant immunity for a statute to be breached or not to be complied with by a party.

See: REPUBLIC v HIGH COURT (FAST TRACK DIVISION) ACCRA; EX PARTE NATIONAL LOTTERY AUTHORITY (GHANA LOTTO OPERATORS ASSOCIATION & OTHERS –INTERESTED PARTIES) [2009] SCGLR 390

GAISIE ZWENNES HUGHES & OTHERS CO. v LODERS CROCKLAAN B.V. [2012]1 SCGLR 363

The courts must not insert words or remove words from legislations such as C.I. 47 in order to arrive at a conclusion that we consider desirable or socially acceptable. If the courts do that, we would usurp the legislative functions which have been consigned to the legislature. That may be a recipe for the tyranny of the judiciary branch, and harbinger of constitutional crisis if not chaos and anarchy.

Therefore, the courts cannot and must not substitute our wisdom for the collective wisdom of the constitution or statutes. The courts undertake to be faithful to the principle and the tradition of jurisprudence.

See: REPUBLIC v FAST TRACK, HIGH COURT, ACCRA; EX PARTE DANIEL [2003-2004] SCGLR 364

CHRAJ v ATTORNEY-GENERAL & BABA KAMARA [2012] 36 MLRG 177 SC

The Applicant counsel contended that even though Order 11 rule 18 (2) does not allow the use of affidavit under Order 11 rule 18 (1) (a), same can be done. However, my view is that Order

11 rule 18 (2) is the only procedure provided under C.I. 47 to attain a remedy under Order 11 rule 18 (1) (a). And if it was in religious realm, I would have described the Applicant counsel's argument as the height of apostasy.

It is settled law, that an application under Order 11 rule 18 must be brought as soon as the defect is noticed, before an Applicant files a defence, contray to what the Applicant did in this case after filing its defence and even going ahead to amend same.

See: DANKWA & 3 OTHERS v ANGLOGOLD ASHANTI LIMITED [2019-2020] 1 SCLRG 641

It must even be emphasised, that the powers of the Court under Order 11 rule 18 are permissive and not mandatory. They confer jurisdiciton which a court will exercise by taking into account all the circumstances of the case. This is to prevent parties being driven from the seat of judgment. It must therefore be exercised with greatest care and circumspection.

See AHMED MUDDY ADAM v FRANK NUAMAH [2020] 163 GMJ 211 SC

In the case of **GBENARTEY AND GLIE v NETAS PROPERTIES AND INVESTMENT AND OTHERS [2015-2016] 1 SCGLR 605,**the Supreme Court emphasised, that where issues have been set down for trial, it would be wrong for a judge to terminate the case summarily under Order 11 rule 18 of C.I.47. The Court reasoned, that Order 11 rule 18 should be used sparingly and in extreme situations and only in cases where it is so plain and obvious from the pleadings. Therefore, if a trial court has set down issues for trial, it should not entertain applications under Order 11 rule 18 except in exceptional situations. As I have stated earlier, in this case, issues have been set down for trial.

It appears to me that the Applicant just woke up from its sleep after filing its amended statement of defence and decided to bring this application.

It is important that laws or rules which set timelines under our laws are strictly adhered to by parties to facilitate timely trials of cases. Therefore, any infringement of these rules on time limits should be met with corresponding sanctions.

See: REPUBLIC v HIGH COURT, (FINANCIAL DIVISION) ACCRA; EX PARTE TWENEBOAH KODUAH [2015] 81 GMJ 191 SC

The importance of time limits in court proceedings or processes cannot be over emphasized. Time lines bring sanctity in the administration of justice.

In **OPPONG v ATTORNEY-GENERAL & OTHERS [2000] SCGLR 275** at **279**, the Supreme Court held, per Bamford Addo JSC (as she then was) as follows:

"Many a time litigant and their counsel have taken rules of procedure lightly and ignored them altogether as if those rules were made in vain and without any purpose. Rules of procedure setting time limits are important for the proper administration of justice. They are meant to prevent delays by keeping the wheels of justice rolling smoothly. If this were not so, parties would initiate actions in court and thereafter go to sleep only to wake up at their own appointed time to continue with such litigation at their pleasure. If this were allowed, litigation could grind to a halt, a sure recipe for confusion and inordinate delays in the due and proper administration of justice".

Furthermore, there are good reasons why rules of procedure stipulate time limits. This is because; it is in the public interest that litigation must come to an end. The rules and procedures set time limits to achieve certainty and procedural integrity by guiding litigants.

Otherwise, a litigant may conveniently take his time to decide when to proceed with his litigation or bring his application. Time limits are too important for the court to ignore. Therefore, this court has no power to craft new rules to aid the Applicant who has brought its application out of time.

I do not think the ends of justice will be served if at this application is considered on its merits.

See: DOKU v PRESBYTERIAN CHURCH OF GHANA [2005-2006] SCGLR 700

In a situation where the court has power to even extend time, it should be based on meritorious grounds. Litigants should not be given the power to hold the machinery of justice in abeyance as long as they desire, and decide to bring their applications anytime. Litigation must come to an end sometime and the courts discretion to extend time should only be used in deserving cases.

Taylor J (as he then was) held in **HARLLEY v EJURA FARMS (GHANA) LIMITED [1977] 2 GLR 179 at 214** as follows:

"In these courts, we dispense justice in accordance with three and only three yardsticks; statute law, case law and well-known practice of our courts".

The well-known practice of our courts is that laws and procedures setting time limits for litigants should be complied with strictly.

The Applicant in its affidavit in support made fetish of the fact, that the Respondent did not give particulars of its alleged negligence in the pleadings. I am of the view, that same can be cured by way of amendment by the Respondent.

From the above rendition, it is my opinion, that the Applicant's application was filed out of time since issues have been set down for trial. Also, the application did not comply with the procedure set down under Order 11 rule 18 (2) of C.I 47 to achieve the remedy under Order 11 rule 18 (1) (a) of C.I 47 when the Applicant attached affidavit to the application.

The Court will remind itself of what **Chinua Achebe** said in his book "**Anthills of the Savannah" at page 155 paragraph 1** in part as follows:

"... While we do our good works let us not forget that the real solution lies in a world in which charity will have become unnecessary."

I wish to conclude this ruling by quoting the book titled '**The Beggars Strike' by Aminata Sow Fall, at page 72 paragraph 2, where the writer stated:**

"When the tarred road gives out, the chauffeur replied, there is a long sandy track that we must follow for about five miles before reaching the new Slum-Clearance Resettlement Area."

In contrast, I do not need to go further in this delivery than to dismiss the application for being unmeritorious and same is accordingly dismissed.

I will award cost of **GHS 5,000.00** in favour of the Respondent against the Applicant. I hereby order, that the Applicant should pay the cost on or before Case Management Conference is held. I am fortified in this direction by the case of **RISS HENRY OKAIKWEI v NATHANIEL AZUMA NELSON [2022] 177 GMJ 251 CA**. I order accordingly.

SGD.

FRANCIS OBIRI

(JUSTICE OF THE HIGH COURT)

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AUTHORITIES

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4. **MADAM RANDI LARTEY & 2 ORS v YAW ABOAH DJIN & ANOR [2022] 177 GMJ 89 SC**
5. **REPUBLIC v HIGH COURT SUNYANI; EX PARTE COLLINS DAUDA (BOAKYE-BOATENG – INTERESTED PARTY) [2009] SCGLR 447**
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17. **ALFA MUSAH v FRANCIS APPEAGYEI [2019-2020] 1 SCLRG 606**

18. **TULARLEY v ABAIDOO [1962] 1 GLR 411 SC**
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34. **HARLLEY v EJURA FARMS (GHANA) LIMITED [1977] 2 GLR 179**
35. **RISS HENRY OKAIKWEI v NATHANIEL AZUMA NELSON [2022] 177 GMJ 251 CA**