

GHANA / JUDGMENT

GBESE STOOL VRS DELTA HOUSE GHANA LIMITED (LD/0037/2024) [2024] GHAHC 201 (12 March 2024)

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12 March 2024

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IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT OF JUSTICE GHANA (LAND COURT 7) HELD IN ACCRA ON TUESDAY, THE 12TH DAY OF MARCH, 2024 BEFORE HIS LORDSHIP ALEXANDER OSEI TUTU (J.) SUIT NO. LD/0037/2024 THE GBESE STOOL :: PLAINTIFF/RESPONDENT ACTING PER DR. NII AYI-BONTE II, GBESE MANTSE, NO. 1, GBESE PALACE – ACCRA VRS DELTA HOUSE GHANA LTD. :: DEFENDANT/APPLICANT AGBLOGBLOSHIE – ACCRA
===== PARTIES: PLAINTIFF/RESPONDENT
REPRESENTED BY NII ARMAH OKPAH II PRESENT DEFENDANT/APPLICANT ABSENT
COUNSEL: FELIX QUARTEY ESQ., FOR PLAINTIFF/RESPONDENT PRESENT DOUGLAS NKETIAH BOAHENE ESQ., H/B FOR BOBBY BANSON ESQ., FOR DEFENDANT/APPLICANT PRESENT
===== R U L I N G The Defendant hereinafter called the ‘Applicant’ brought this application on 27th December, 2023 to strike out the Plaintiff’s Statement of Claim as disclosing no cause of action, pursuant to the inherent jurisdiction of the Court. RULING DELIVERED BY J. ALEXANDER OSEU TUTU IN SUIT NO. LD/0037/2024 AT LAND COURT ‘7’ ON 12TH DAY OF MARCH, 2024 1 It is the Applicant’s case that it acquired the subject matter land as a Deed of Assignment dated 23rd November, 2001 emanating from a lease granted by the Lands Commission which is in charge of Government’s lands. The Applicant claimed to have developed the land and remained in uninterrupted possession of same. Upon expiry of the original lease, the Lands Commission has since renewed the land in favour of the Applicant. The Applicant further at paragraph 16 of its supporting affidavit noted that it is its belief that where land is acquired or vested in the Government of Ghana, all rights of the allodial title owners are extinguished by the said acquisition or vesting and so if the Plaintiff had any interest in the land at all, that interest became extinguished after the acquisition or vesting by the Government. It therefore believes that the Plaintiff’s remedy lies in a compensation against the Government, but not in respect of a claim for declaration of title to the land. The Application was opposed by the Plaintiff/Respondent on the ground that the land in dispute is at Kantamanto in Accra in respect of which an injunction application has been brought against the Defendant/Applicant to desist from carrying out construction works pending the determination of the suit and not the developed land exhibited by the Applicant as Exhibit ‘DH4’. The Respondent denied the

compulsory acquisition of the land by the Government and its capacity to lease same to the Applicant's grantors. It was further contended by the Respondent that if the subject matter land was compulsorily acquired by the Government, no compensation whatsoever was ever paid to them and thus denied the extinguishment of its title. To begin with, I must say that while the Applicant's submission has the outlook of some lucidness and soundness upon a cursory look, its careful analysis opens up its frailty and defects that appear to hinge on fundamental issues. It may appear that the Applicant entered this contest upon misguided and inaccurate facts. At paragraph 5 of the supporting affidavit, Byron Thomas Wumbee deposed thus: "That the Applicant is a limited liability company formerly called Bureau Delta Huis Limited. A copy of the evidence of the change of name is attached as Exhibit DH1". RULING DELIVERED BY J.

ALEXANDER OSEU TUTU IN SUIT NO. LD/0037/2024 AT LAND COURT '7' ON 12TH DAY OF MARCH, 2024 2 Upon a perusal of Exhibit 'DH1', the Applicant was rather incorporated originally on the 21st day of October, 2001 as Delta House Ghana Limited. The said Delta House Ghana Limited received its Certificate to Commence Business on 25th October 2001. It was on the 13th day of October, 2008 that it changed its name from Delta House Ghana Limited to Bureau Delta Huis Limited. This change in name as gleaned from the Applicant's exhibit was done pursuant to a Special Resolution with the approval of the Registrar of Companies. There is nothing before the Court to show that after the change in name from Delta House Limited to Bureau Delta Huis Limited, the Company again reverted to its former name. This means that since 13th October, 2008 after the Registrar of Companies had approved the change of name of the Applicant's company and issued a certificate to that effect, it ceased to be known and called by its former name - 'Delta House Limited'. It is therefore erroneous and misleading for the Applicant to enter this contest with a name it had ceased to be known and called. The name of a person or an entity is exclusive and very important that it cannot be taken for granted. If it were not so, there would have been no need for the Registrar of Companies to issue a certificate whenever there is a change of a Company's name. The Supreme Court in the case of KOANDA VRS. TENASSA PHARMACEUTICAL & TRADING COMPANY LTD. [2013-2014] 2 SCGLR 1104 minced no words in demonstrating how the use of a Company's wrong name could have serious legal ramifications. His Lordship Gbadegbe JSC speaking for the Court held at page 1112 of the judgment as follows: "Then there is the name by which the Plaintiff took out the writ as the summons in the action herein Tenassa Pharmaceutical & Trading Co. Ltd while it closely resembles the name on the Certificate of Incorporation, Tenasa Pharmacy & Trading Co. Ltd. (as portrayed by TPTC 4) and that of the Certificate to Commence Business, Exhibit TPTC, they are dissimilar. Also, regarding the name of the Company, while the name on exhibits TPCT 1 and TPCT 4 read 'Tenasa Pharmacy and Trading Company Limited' with the first word 'Tenasa' having one 's' that on the writ and other processes bear double 'ss' and reads 'Tenassa'. These differences in corporate law have huge consequences as the name on the Writ does not correspond with the registered entity and are enough to disentitle the Plaintiff to the reliefs he claims. The question that these dissimilarities raise for our determination in these proceedings remained unanswered at the end of the Plaintiff's case. The said question is whether the RULING DELIVERED BY J. ALEXANDER OSEU TUTU IN SUIT NO. LD/0037/2024 AT LAND COURT '7' ON 12TH DAY OF MARCH, 2024 3 incorporated entity which claims to be Plaintiff is Tenassa Pharmaceuticals and Trading

Company Limited or Tenasa and Trading Company Limited”. In BOATENG ASANTE VRS. SCANSHIP GHANA LIMITED, CIVIL APP. NO. J4/15/2013, 15THJANUARY 2014, Anin Yeboah JSC (as he then wa) expressed similar sentiments thus: “For a name which is mis-spelt may have far reaching consequences in law.” In DAVID OSEI BONSU VRS. YAA DUKU & ANOTHER [2018] DLCA 4624, the Applicant was called DAVID OSEI BONSU, but had the name KOFI DAVID in his passbook. The Court of Appeal held that “the trial judge erred in glossing over same and taking the difference in names as a ‘mere irregularity that can easily be cured by Order 81 of C.I. 47. With the greatest respect to the learned trial judge, Order 81 of C.I. 47 is for non-compliance with rules and not issues such as difference in names”. With these authorities staring at me in my face, I am not too sure that I can treat them lightly and disregard their import. The implication is that the Applicant as it appears in this suit is a non-existing Company and that being so, it is bereft of the requisite capacity to make the prayer it has brought. In justice however and perhaps, on the authorities of the interest of ASSEMBLIES OF GOD CHURCH VRS. OBENG (2011) 32 GMJ 132 SC; [2010] SCGLR 300 AT PAGE 305 & GHANA PORTS & HARBOUR AUTHORITY VRS. ISSOUFOU (1993–94) 1 GLR 24 SC; (1991) 1 GLR 501 CA, the name of the Defendant could be amended to ‘Bureau Delta Huis Limited’ to reflect its current status. If that course is adopted, then it would not be difficult for the Court to consider the Application on its merits. Let me point out at this juncture that the factual inaccuracy in the status of the Applicant in this Court did not only affect the capacity in which the Defendant is defending the suit but also the capacity in which it allegedly acquired its land. It could be seen from the Deed of Assignment relied upon by the Defendant that it was executed in favour of MESSRS BUREAU DELTA HUIS B.V. on 23rd November, 2001. If it was not until 2008, before a special resolution was passed to change the Defendant’s name to Bureau Delta Huis Limited, RULING DELIVERED BY J. ALEXANDER OSEU TUTU IN SUIT NO. LD/0037/2024 AT LAND COURT ‘7’ ON 12TH DAY OF MARCH, 2024 4 then it stands to reason that the said name was not known to the laws of Ghana prior to that date and there is no assignment from the original assignee to the Defendant’s company after the name change. Additionally, at paragraph 6 of the Applicant’s supporting affidavit, he described its land as being - PARCEL NO. 20 BLOCK 1, SECTION 040 SITUATE AT AGBOGBLOSHIE MEASURING APPROXIMATELY 1.2 ACRES. In the Assignment attached as Exhibit ‘DH2’, the land is described in the schedule as rather measuring an area of 1.18 acres and it is at Ayalolo. Agbogloboshie was not mentioned in the Deed and no explanation was given to the Court to show that Ayalolo and Agbogloboshie are one and the same place. It was also not explained why the dimension of the land differed. Exhibit ‘DH3’ added to the confusion of the Court when it mentioned the description of the land as being at Ayalolo and measuring (this time) of an area of 1.12 acres. The land certificate marked as Exhibit ‘DH5’ gives the acreage of the land as 1.20 acres. Counsel for the Applicant referred the Court to the results of its search conducted over the land attached to their affidavit in opposition to the joinder application. The plan of the Applicant’s land marked therein as Exhibit ‘DH1’ has an area of 1.06 acres. The same Applicant has another plan of land attached to Exhibit ‘DH6’ which claims that its land has an area of 1.21 acres and not 1.06 acres as contained in the former document. With these discrepancies of the Defendant’s land’s identity given variously as 1.06 acres, 1.2acres, 1.18acres, 1.12 acres and 1.20 acres, I believe the Defendant will have to proceed to trial to proffer an explanation. The Applicant relied on documents written by the Lands

Commission to demonstrate that the lease covering the subject matter land has been renewed for it. The Applicant provided virtually no evidence that that land is in connection with the subject matter land. This is because while the Applicant consistently described its land as 'Parcel No. 20 Block 1, Section 040 situate at Agbogbloshie', the land in respect of which the Lands Commission renewed for the Applicant is described as 'unnumbered' in its two letters attached to its application, despite having a site plan attached to the letters. **RULING DELIVERED BY J. ALEXANDER OSEU TUTU IN SUIT NO. LD/0037/2024 AT LAND COURT '7' ON 12TH DAY OF MARCH, 2024** 5 It may be recalled that the Site Plan of the Applicant attached to the letters written by the Lands Commission is of an area of 1.21 acres. On the other hand, the site plan of the Applicant in the search conducted attached to its affidavit in opposition is 1.06 acres. It was not clarified again how the Applicant's land of an area of 1.06 acres in that site plan increased to an area of 1.21 acres as contained in Exhibit 'DH6'. I am unable to gloss over the fact that the dimension and identity of the land being claimed by the Defendant is not free from controversy and this is significant due to the fact that at paragraph 7 of the affidavit in opposition deposed to by one, Nii Armah Okpah II, the land in dispute is undeveloped contrary to the claims of the Applicant that it has developed the land. Could it be that the portion extended beyond the 1.06 acres is within the land being claimed by the Plaintiff? On the submission by the Applicant that the Plaintiff may have a cause of action against the Government for compensation and not them, I will hasten slowly to drive the Plaintiff from the litigation seat. This is because, the fact that the land was compulsorily acquired or vested by the Government was the case of the Applicant and not the Respondent. Concerning the rules of this Court, I am mindful of the fact that it is the Plaintiff's case that should determine the jurisdiction of the Court to proceed to hear the matter and not otherwise. In **AKATI VRS. NARTEY (1980) GLR 218**, it was held at holding (1) thus "the jurisdiction of a Court to hear any particular matter was ordinarily determined by the Plaintiff's claim and not the Defendant's Defence. Hence a defence should not ordinarily oust the jurisdiction of the Court." The principle was stated poignantly in **AMPONSAH VRS. AMPONSAH [1997-1998] GLR 43** as follows: "It was a fundamental principle of law that it was the status of the Plaintiff, i.e. the Petitioner in the instant case, and the issues raised in the statement of claim that determine the jurisdiction of the Court and not the defence which merely disputed the claim but did not dictate it. Accordingly, the respondent could not use his defence to oust the jurisdiction of the Court." The Applicant strenuously contended that compulsory acquisition of vesting of land in the Government extinguishes the title of the allodial owner. While this may be true to some extent, it is too simplistic to say that the chapter is **RULING DELIVERED BY J. ALEXANDER OSEU TUTU IN SUIT NO. LD/0037/2024 AT LAND COURT '7' ON 12TH DAY OF MARCH, 2024** 6 closed on the allodial owner. In the first place, the law provides that land acquired compulsorily must be used for only the public interest or for the purpose for which it was acquired. Where for some reason, it was not used for the intended purpose, the owner of the land immediately before the compulsory acquisition is entitled as of right to the first option. In this case, the Applicant at paragraph 8 of its affidavit in opposition to the joinder application claims that the land was acquired by the Government for the purpose of Korle Lagoon Development. If for some reason, it was not used for the said purpose, the original owners should have been given the first option. I believe it is the Lands Commission that is in the position to speak to all these details. In the light

of the above analysis, I am unable to grant the application to strike out the Statement of Claim of the Plaintiff. In the interest of justice, I will however exercise my powers under Order 4 Rule 5 (2) of C.I. 47 to join the Lands Commission to the suit for the effectual and final determination of the suit in accordance with Order 1 Rule 1 (2) of the High Court Civil Procedure Rules, 2004 (C.I. 47). I order the Plaintiff to amend the Writ to capture Defendant's name to reflect its current status. I award costs of GH¢3,000.00 in favour of the Plaintiff/Respondent against the Defendant/Applicant (SGD.) H/L ALEXANDER OSEI TUTU JUSTICE OF THE HIGH COURT REFERENCES: CASES CITED: KOANDA VRS. TENASSA PHARMACEUTICAL & TRADING 1. COMPANY LTD. [2013–2014] 2 SCGLR 1104 2. BOATENG ASANTE VRS. SCANSHIP GHANA LIMITED, CIVIL RULING DELIVERED BY J. ALEXANDER OSEU TUTU IN SUIT NO. LD/0037/2024 AT LAND COURT '7' ON 12TH DAY OF MARCH, 2024 7 APP. NO. J4/15/2013, 15TH JANUARY 2014 DAVID OSEI BONSU VRS. YAA DUKU & 3. DLCA 4624 ANOTHER [2018] ASSEMBLIES OF GOD CHURCH VRS. OBENG [2011] 4. 132 SC; [2010] SCGLR 300 AT PAGE 305 32 GMJ GHANA PORTS & HARBOUR AUTHORITY VRS. 5. [1993–94] 1 GLR 24 SC; [1991] 1 GLR 501 CA ISSOUFOU 6. 7. AKATI VRS. NARTEY (1980) GLR 218 AMPONSAH VRS. AMPONSAH [1997–1998] GLR 43 ENACTMENT: 1. THE HIGH COURT CIVIL PROCEDURE RULES, 2004 (C.I. 47). RULING DELIVERED BY J. ALEXANDER OSEU TUTU IN SUIT NO. LD/0037/2024 AT LAND COURT '7' ON 12TH DAY OF MARCH, 2024 8

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