

GHANA / JUDGMENT

Kwofie Vrs: Dampare and 3 Others

[2023] GHAHC 16 (8 June 2023)

[2023] GHAHC 16

COURT

High Court

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IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT OF JUSTICE
ACCRA (HUMAN RIGHTS DIVISION ONE) HELD IN ACCRA ON 8TH JUNE 2023
BEFORE HER LADYSHIP JUSTICE
BARBARA TETTEH-CHARWAY (MRS)
SUIT NO. HR/0048/2023

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PLAINTIFF/RESPONDENT

DANIEL KWOFIE
C/O GPS 016-3574
ACCRA

VRS:

1.
DR.
GEORGE
AKUFFO
DAMPARE
DEFENDANTS/APPLICANTS
INSPECTOR GENERAL OF POLICE
GHANA POLICE SERVICE
HEADQUARTERS, ACCRA.
2. C. O. P CHRISTIAN TETTEH YOHUNU
GHANA POLICE SERVICE HEADQUARTERS
ACCRA.
3. A. S. P EMELIA OWUSU-ANSAH - DEFENDANTS/APPLICANTS
GHANA POLICE SERVICE
DANSOMAN DIVISIONAL HEADQUARTERS
DANSOMAN, ACCRA.

RULING

1] This is a motion on notice for an order to strike out the names of defendants/applicants as parties to the suit. The background to the instant application is that on 25th April 2023, the plaintiff caused his lawyer to issue a writ of summons against the defendants herein for a number of reliefs. 2] A notice of entry of conditional appearance was filed on behalf of the defendants on 6th February 2023 in addition to the instant motion to strike out defendant's names as not being proper parties to the suit. 3] An affidavit in opposition to the instant motion was filed by counsel for the plaintiff respondent in respect of which counsel for the defendant filed a supplementary affidavit in support. 4] After hearing legal arguments from counsel on both sides and considering the affidavits filed, the court decides as follows; 5] Order 9 Rules 7(1) of the High Court (Civil Procedure) Rules, C. I 47, provides that: 7(1) A defendant may file conditional appearance. Order 9 Rule 8 provides that;

8. A defendant may at any time before filing appearance, or, if the defendant has filed a conditional appearance, within fourteen days after filing appearance, apply to the Court for an order to;
 - a. set aside the writ or service of writ
 - b. declare that the writ or notice of the writ has not been served on the defendant
 - c. discharge any order that gives leave to serve Notice on defendant outside the jurisdiction 6]
- In the instant case, after the Notice of Conditional Appearance was filed on behalf of the defendants, counsel for the defendants applicants filed a motion for an order to strike out the names of the defendants as parties to the suit. The basis of this application was that the defendants were not the proper persons to be sued in respect of the plaintiff's claim. 7] The court notes that the defendant's application did not attack the plaintiff's writ on any of the grounds provided for under Order 9 Rules 7 & 8. Their sole complaint that they were not the proper persons to be sued was not among the grounds which justified their entering a conditional appearance. See: *Amissah- Abadoo v Abadoo* [1973] 1GLR 490, where it was held per Holding 2 that: "A defendant might enter a conditional appearance where he intended to have the writ or the service of the writ set aside on the ground of irregularity in the writ or the service of it or to deny jurisdiction. Irregularity here included the irregularity in the issue or service of the writ or in the form of the writ. The defendant's application did not attack the plaintiff's writ on any of the above, grounds." 8] The court therefore finds that it was inappropriate for the defendants to file a motion to strike out their names from the suit after entering conditional appearance. 9] Furthermore, the court notes that the defendants' complaint that they were not the proper parties to be sued was their defence to the action and therefore same should have been raised in their pleading. In the instant suit, however, the defendants have not filed their statement of defence. Therefore, it is premature for a determination to be made as to whether or not they are proper parties to the action. 10] In the circumstances, the application to strike out the names of defendants as parties to the

suit is dismissed. 11] No costs awarded. (SGD) BARBARA TETTEH-CHARWAY (MRS) JUSTICE OF THE HIGH COURT COUNSEL JOE DEBRAH WITH WENDY OKAI FOR THE PLAINTIFF/RESPONDENT – PRESENT SYLVESTER ASARE SUP. FOR THE DEFENDANTS/APPLICANTS - PRESENT 4

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