

QUESTION 1

A. Order 11 r 10 of CI 47 provides that a party shall not in any pleading make any allegation of fact or raise any new ground or claim inconsistent with a previous pleading made by that party. Also a party shall not adduce evidence in support of facts not raised in their pleadings. The case of **Hammond v. Odoi [1982-1983] 2 GLR 1215** illustrates the said principle. The only way a party can change his or her pleading is by way of amendment.

- In **Hammond v Odoi**, the plaintiff's case as stated in his writ and statement of claim, was, simply that he obtained his title under a customary grant from a certain Nii We family. The defendants challenged the right of ownership of the land by the Nii We family. In his reply, the plaintiff's case was no longer that the Nii We family were the owners of the land in dispute, but that the Osu stool were the real owners of the disputed land, and that the Nii We family, as subjects of the Osu stool, occupied that land, and that the plaintiff and his brothers, being also the subjects of the Osu stool, were entitled to occupy Osu stool lands. The Supreme Court held that the reply was a departure from the statement of claim. His Lordship Crabbe JSC summed up the importance of pleadings as follows:

“Pleadings are the nucleus around which the case - the whole case revolves. Their very nature and character thus demonstrate their importance in actions, as for the benefit of the court as well as for the parties. A trial judge can only consider the evidence of the parties in the light of their pleadings. The pleadings form the basis of the respective case of each of the contestants. The pleadings bind and circumscribe the parties and place fetters on the evidence that they would lead. Amendment is the course to free them from such fetters. The pleadings thus manifest the true and substantive merits of the case.”

B. It is necessary for a plaintiff to file a Reply to a statement of defence where a counterclaim is filed by the defendant together with the statement of defence served. The plaintiff must incorporate the defence to the counterclaim in the Reply.

- C.** The options available to a court under **Order 36 r 1** are;
- a. The court may strike out the action off the trial list.
 - b. Where the plaintiff attends and the defendant fails to attend, dismiss the counterclaim, if any, allow the plaintiff to prove the claim.
 - c. Where the defendant attends and the plaintiff fails to attend, dismiss the action and allow the defendant to prove the counterclaim, if any or
 - d. Make such other order as is just.
- D.**
- a) Pleading must not contain evidence. Per **Order 11 rule 7**, the rule is that facts not evidence is pleaded. Evidence is adduced in court from the facts that are pleaded.
 - b) The rule against departure as provided for in **Order 11 rule 10**; thus a party shall not not in any pleading make any allegation of fact or raise any new ground or claim, inconsistent with a previous pleading made by the party.
 - c) Every pleading must state material facts only
 - d) Every pleading must state all the material facts relied on
 - e) Every pleading must plead facts not law.
 - f) All material facts must be stated in summary form
- E.** A writ of FI FA otherwise known as writ of fieri facias, is a writ of execution resorted to in judgments or order for the payment of money as stipulated in **Order 45 r 1**. When a writ of Fi Fa is issued, it is executed by the seizure and sale of the debtor's property sufficient to satisfy the amount of the judgment debt together with post-judgment interest at the appropriate rate until payment and the costs of execution. Whereas a garnishee order per **Order 47** is the process by which money due to a judgment debtor from a third party can be attached and used to satisfy the judgment debt. By this process, the third party (garnishee) who owes the judgment debtor is ordered by the court to appear in court and show cause why it should not be ordered to pay the judgment debt and failure to dispute the debt will result in an

order absolute against the garnishee to pay the money in its custody to the judgment creditor.

F. Order 82 r 3 of CI 47 defines pleadings as the formal allegations by the parties to a law suit of their respective claims and defences with the intended purpose of providing notice of what is to be expected at the trial.

The essence of pleadings includes the fact that pleadings are aimed at defining the issues in contention in a case and also pleadings serve notice to the parties as to the case each should expect. Pleadings serve as a record of issues that are eventually determined in a suit and by their nature assist the court in their case management. Indeed, per the words of His Lordship Crabbe JSC in **Hammond v Odoi**, pleadings are the nucleus around which the whole case revolves.

G. Summary judgment per **order 14 r 1**, is obtained in an action, where the plaintiff applies to the court for judgment on the ground that the defendant has no defence to a claim included in the writ except as to the amount of any damages. The application for summary judgment is made

on condition that the defendant has been served a writ and statement of claim and the defendant has entered appearance. A summary judgment when granted against a defendant who failed to appear at the hearing may be set aside within fourteen days of service of the notice of judgment on the defendant.

However, a judgment in default of pleadings is obtained against a defendant who has entered appearance but fails to file a statement of claim within the prescribed time. The nature of the judgment to be entered depends on the claim endorsed on the plaintiff's writ of summons. An application to set aside a default judgment has no time limit and the affected party must prove that he has a good defence to the action.

H. Non - Compliance with the High Court Rules does not render the proceedings void because by virtue of **Order 81 r 1** a failure to comply with the requirements of the Rules, whether in respect of time, place, manner, form, or content etc such failure shall be treated as an irregularity and shall not nullify proceedings. This provision finds favour in the policy rationale of the rules as provided for in **Order 1 r 2** that the Rules shall be interpreted to achieve speedy and effective justice, avoid delays and unnecessary expense and ensure that as far as possible, all matters in dispute between parties may be completely, effectively and finally determined and multiplicity of proceedings concerning any such matters avoided. **Ex parte ALL GATE**

I. **Per Order 42 r 1** any party who is aggrieved by a judgment or order of the court from which no appeal is allowed but which no appeal has been filed may apply for a review of that judgment or order. That is a judicial re-examination of a court's proceedings or a reconsideration by the same court of its earlier decision.

1. Upon the discovery of new and important matter or evidence which after the exercise of due diligence was not within applicant's knowledge or could not be produced at the time judgment or an order was made.
2. Where there is a mistake or error apparent on the face of the record
3. Upon any other sufficient reason.

J. A caveat is defined in **Order 66 r 11** as a notice filed by any person who is interested in the estate of a deceased person requesting that nothing is done in the estate of the deceased person until he or she has been heard. A caveat could be filed either before or after an application has been made for probate or letters of administration but before the grant is given.

QUESTION 2 – 2015 CIVIL PROCEDURE PAST QUESTION

- a. As the lawyer for Paul Kumi, I will advise that he applies to the court to set aside the writ issue on grounds that the managing director cannot begin or carry on proceedings for Adom Financial Services Ltd. Order 4 rule 1(2) of the High Court Civil Procedure Rules (“**C.I. 47**”) provides that a body corporate shall not begin or carry on proceedings except by a lawyer unless permitted to do so by an express provision or any enactment.
- b. A plaintiff may apply to the court to serve the writ of summons and Statement of Claim by substitution by relying on Or.7 r6 of C.I 47. The rules provide that where a document is to be served personally and it appears to the court that:
1. 3 or more attempts have been made without success to effect personal service, or
 2. any attempt at personal service will cause a delay, or
 3. for some impracticable reasons serving the document personally will be impossible, then the court will order substituted service.
- Kombat v Bediako** the Court held inter alia that substituted service can only be resorted to where personal service cannot be effected for reasons stated with great particularity in an affidavit in respect of the grounds stated in **Order 7 r6 of C.I. 47**.
- c. Or.2 r7(5) of C.I 47 provides that no writ, notice is which is to be served out of the jurisdiction, shall be issued without leave of the courts as provided in Or. 8. Thus, where the defendant is based outside Ghana, the Plaintiff needs permission from the court in order to issue a writ and when the leave is granted and it's been issued, an application for leave must be applied for in order to serve it outside the jurisdiction. In **Lokko v Lokko**, the Court held that the grant of leave is a condition precedent to the issue of a writ against a defendant who is resident outside the jurisdiction.
- d. As counsel for Yaw Nsiah, I will advise him to apply to the Court in Kumasi to have the case transferred to the Eastern region on the ground that the land is situate in Akonto, in the Eastern Region. According to Or.3 r1(1) of C.I 47 every cause affecting immovable property or any interest in the immovable property or for any damage to it, shall be commenced in the region in which the immovable property or any part of it is situate.

QUESTION 3

3A. Reserved price is the lowest fixed price at which an item is offered at an auction sale at which it will be sold, if no higher price is bid, or below which the seller is not obligated to accept the winning bid.

Under civil procedure a reserved price is usually mentioned when a sales in the execution of judgments is required.

Order 45 r 8 Rule 8 of CI 47 on Sales in Execution of Judgments provides that

(1) Sales in execution of judgments shall be made under the direction of the Registrar, and shall be conducted according to such orders, if any, as the Court may make on the application of any party concerned.

(2) Unless the Court authorizes the sale to be made in any other manner, the sales shall be made by public auction.

(3) An order relating to sale may be made at the time of issuing a writ of fieri facias or afterwards.

Furthermore , the AUCTION SALES LAW, 1989 (PNDCL 230) Section 17—Sale with or without Reserve also provides that (2) Where the auction sale is as a result of a judgment debt, the sale shall be subject to a reserved price to be determined by the court which gave the judgment.

B. According **the AUCTION SALES LAW, 1989 (PNDCL 230) Section 17(2)** Where the auction sale is as a result of a judgment debt, the sale shall be subject to a reserved price to be determined by the court which gave the judgment.

i. The court that gave judgment determines the reserved price upon an application by the judgment creditor through a motion on notice to the judgment debtor. This motion to be attached with a valuation report on the goods which has determined both the market value and force sale value. The reserved price shall be fixed based on the force sale price provided for in the report.

ii. Where a judgment debtor believes the values provided in the valuation report of the judgment creditor are low, the judgment debtor is permitted to commission a valuer to

also present a different valuation and the court shall determine the reserved price based on both reports presented by the judgment creditor and judgment debtor

lii. The court could also appoint an independent valuer to value the goods taken in execution for purposes of fixing the reserved price

ADDITIONAL INFORMATION

AUCTION SALES LAW, 1989 (PNDCL 230) Section 17—Sale with or without Reserve

(1) The auctioneer shall state the particulars or conditions of sale by auction of any goods or land whether such sale is without reserve, or subject to a reserved price, and whether a right to bid is reserved by the vendor.

(2) Where the auction sale is as a result of a judgment debt, the sale shall be subject to a reserved price to be determined by the court which gave the judgment.

(3) Where the sale is without a reserved price it shall not be lawful for the vendor or any person acting on his behalf or employed by him to bid at such sale or for the auctioneer knowingly to take any such bidding.

(4) Where the sale is subject to a reserved price as regards any one or more specified lots, it shall be lawful for the vendor or any person employed by him to give one bid for each such lot and no more; and such bid shall be openly declared at the auction upon the lot being put up for sale, before any other bidding for such lot is received.

(5) Where the sale is subject to the right of the vendor to bid it shall be lawful for the vendor or for any one person acting on his behalf, but not more than one, to bid at such auction in such manner as he thinks proper.

(6) Where the vendor or any person acting on his behalf or employed by him, bids at any sale contrary to any provisions of this section, any purchaser may refuse to fulfil his purchase; but the highest bona fide bidder shall be entitled, if he so elects, to have the goods or land at the price offered by him.

(7) Where the sale is subject to a reserved price, the sale shall not take effect even when the property is knocked down to the highest bidder if the highest bid is lower than the reserved price and in such a case the highest bidder has no right of action.

Provided that where an auctioneer signs a memorandum of the contract after accepting a bid below the reserved price he thereby impliedly warrants that he has authority to sell at the price named, and is liable to the purchaser for breach of warranty of authority.

(8) Any auctioneer who knowingly receives a bid made contrary to any of the provisions of this section shall be guilty of an offence and shall be liable on conviction before a court or Tribunal to a fine not exceeding ₦100,000.00 or to imprisonment not exceeding three years or to both.

3B. A liquidated sum could be obtained through the following execution processes

i. Writ of Fieri Facias (Fifa)

ii. Garnishee Proceedings

EXECUTION

Is the recognized method of enforcing an executable judgment. That is a judgement that orders a party to do or abstain from doing an act. Enforcement of a judgement is done by writs of execution.

Order 44 r 1. these writs are valid for 12 months and can be renewed however if not executed within 12 years will be caught by the limitation decree sec 5 (2). only the property of the judgment debtor is to be attached and where there is sufficient movables, immovables shall not be attached. Order 44 r 2

Generally according to order 44 rule 3 one needs leave of the court to issue a writ of execution where

Rule 3—Necessity for Leave to Issue Writ of Execution

(1) A writ of execution to enforce a judgment or order may not issue without leave of the Court in the following cases

(a) where six years or more have elapsed since the date of the judgment or order;

(b) where any change has taken place, whether by death or otherwise, in the parties entitled or liable to execution under the judgment or order;

(c) where the judgment or order is against the assets of a deceased person coming into the hands of his or her executors or administrators after the date of the judgment or order, and it is sought to issue execution against the assets;

(d) where under the judgment or order, any person is entitled to relief subject to the fulfillment of any condition which it is alleged has been fulfilled, or

(e) where any goods to be seized under a writ of execution are in the hands of a receiver appointed by the Court or a sequestrator.

Before execution a judgment creditor must file an entry of judgment, or a formal decree if it is a district court judgment, where after 7 days of service the debtor fails to comply with the orders under the judgment the creditor can start the execution process.

This process depends on the nature of the nature of the judgement.

1. writ of Fieri Facias (Fifa) order 44

usually used for judgments for the payment of money. This writ is to be attached with a Praecipe which details the particulars of the attachment (list of goods). Here after the debtor fails to comply with the order court after being served with the notice of entry of judgement the sheriff may proceed with the execution by attaching the movables where they are sufficient, if not immovables may be attached. According to Auction sales law PNDCL 230 These properties are to be sold by public auction after a reserved price has been determined by the court. Thereafter an auctioneer appointed by the sheriff may conduct a public auction after the appropriate notices have been given. Where the attachments are movables, a notice posted in a community newspaper or the community's public notice board for 7 days is required Immovables however require a 21 day notice per Order 45 r 9. auction sales may however be set aside for irregularity within 21 days after the sale under order 45 r 10. Where a sale is declared null and void the order for a resale must be advertised again in the prescribed manner however no need if the sale was simply postponed. A certificate of purchase is issued to the purchaser where no application to set aside the sale is filed or where such an application is dismissed signifying a transfer of title and interest from the judgement debtor to the purchaser. KUMAH V. HIMAH

2.GARNISHEE PROCEEDINGS ORDER 47

this process is used where money due a judgement debtor from a third party is to be attached and used to satisfy the judgement debt. The third party called the garnishee who owes the debtor is ordered by the court to pay the judgement creditor the sum due the judgement debtor.

First an order is made upon an ex parte application made ordering the garnishee to appear to show cause why it should not be ordered to pay the judgement debt. This is known as the garnishee Nisi This is served on both the judgement debtor and the garnishee.

If upon the specified return date the garnishee does not dispute the debt an absolute order is made against the garnishee to pay the money in its custody to the judgement creditor. This is called a garnishee absolute.

3(c)

Scons Ltd. Obtained judgment for declaration of title and recovery of possession of a parcel of land at Adenta against Koo Kumi. The land is occupied by twelve (12) different artisans who were not parties to the action. What steps and measures must Scons Ltd take to enforce the judgment?

Answer

The first thing a judgment creditor must do after judgment is given is to file a notice of Entry of Judgment. When served on the losing party and he doesn't satisfy the judgment within 7 days of the service, the process of execution is started.

The kind of execution process required by Scons Ltd to enforce the judgment against Koo Kumi is a writ of possession. This writ is resorted to where a judgment or an order requires the giving up of an immovable property or for ejection.

Under Order 43 r 3(2), a writ of possession shall not be issued without the leave of the court except in mortgage actions under Order 56.

The leave shall not be granted unless the court is satisfied that all persons in actual possession have received the notice of the proceedings to enable a person apply for any relief to which the person may be entitled (Order 43 r 3(3)). What this rule means is that people in occupation of a property subject to the writ of possession must be notified of the execution proceedings whether they were parties to the action or not.

The judgment creditor (Scons Ltd) is required to provide a detailed description of the land or premises as defined in the judgment which is being enforced through the writ of possession. A writ of possession which does not conform to this rule in Order 43 r 13 risk being declared incompetent.

In summary, Scons Ltd must

1. Serve a notice of Entry of Judgment on Koo Kumi
2. After the expiry of 7 days, it must apply for leave to issue a writ of possession against Koo Kumi
3. Before leave it sought, it must notify Koo Kumi and all the 12 artisans who were in occupation of the land sought to be recovered.

4. It must give a detailed description of the land/property for which the writ is being sought

3(d).

What is an Interpleader proceeding? How different is Registrar's interpleader from Stakeholder's Interpleader?

Interpleader proceedings are proceedings in which an application is brought by a party who is in possession of a property, who is being sued or expects to be sued, praying the court to invite/summon persons interested in the property to attend court and contest title to the property so that whoever acquires the legal title will have the right to the property. They are also commonly instituted after the court seizes property by way of execution, and a third party then claims ownership of the money or goods that have been or will be seized. If the creditor disputes the third party's claim, the Court will issue an interpleader summons for all the parties to attend Court to so that rightful ownership can be determined

Under Or.48 r1, interpleader proceedings may be commenced in 2 ways:

Registrar's Interpleader:

This occurs where the Registrar of the Court or other officer of the court seizes property by way of execution or has in his possession the proceeds or value of any property and a person, other than the Judgment Debtor a.k.a. the claimant, claims them.

The claimant will file a notice of claim and if the claim is denied by the Judgment Creditor, the registrar is required to initiate interpleader proceedings to determine whether the property belongs to the Judgment Debtor and therefore can be seized, or to the claimant.

Stakeholder's Interpleader

It occurs where a person under liability for any **debt, money or goods** has been or expects to be sued by **two or more rival claimants** to the property. If he **has no interest in the dispute**, he can apply for relief by the way of interpleader i.e. a hearing at which the rival claimants will be made to interplead to argue against each other and not against him.

The main difference between Registrars' Interpleader and Stakeholder interpleader is that in stakeholder interpleader, the applicant when applying must provide evidence in the form of an affidavit that they:

- Claim no interest in the subject-matter in dispute other than for charges or costs
- Do not collude with any of the claimants to that subject-matter
- Are willing to pay or transfer that subject-matter into court or to dispose of it as the court may direct.

However, in Registrar's interpleader, the Registrar need not provide this evidence unless the court so directs.

Also as the name suggest, a Registrar's interpleader is commenced by the registrar and the Stakeholder Interpleader by a party who does not wish to be saddled with a writ.

QUESTION 4

(a) Kofi Mensah's application for joinder was refused by the Circuit Court, Accra. He has therefore instructed you to pursue an appeal against the decision of the court. Which court will you appeal to? Describe the steps you will take to ensure that the appeal is properly filed.

(b) Yaw Mpata lost the Parliamentary bye-election for the Obuoba Constituency in Accra. He has consulted you to challenge the election results. How would you commence a competent action for him?

(c) What is Probate Action? How is it different from Administration Action?

(d) What remedy has a party who fails to attend a civil trial and judgment is entered against him?

(20 marks)

QUESTION 4

A

a. Civil appeals from the Circuit Court, lies in the Court of Appeal. Section 11 of Act 459 provides that *"The Court of Appeal shall also have jurisdiction—*

(a) to hear appeals from any judgment of a Circuit Court in a civil cause or matter; and
(b) in any matter in which jurisdiction is conferred on the Court under any other enactment.
[As substituted by the Courts (Amendment) Act, 2002 (Act 620), s. 1]

Based on the above, Kofi Mensah will have to file an appeal at the Court of Appeal.

b.

- A party aggrieved by an interlocutory decision of the Circuit Court, who intends to appeal must first seek leave of the Circuit Court within 21 days from the date of order. When the leave is refused the party must repeat same at the Court of Appeal within 21 days of refusal. Where the leave is granted by the Circuit Court or the Court of Appeal, the party shall file the Notice of Appeal within 21 days. In all cases the time prescribed for filing of interlocutory appeal shall not be extended **(Rule 9 C 19)**

- The appeal shall commence by filing of Notice of Appeal within the prescribed time

The law is that a party seeking to appeal against an interlocutory decision of a Circuit Court must first seek leave of the Circuit Court and upon refusal the Court of Appeal before filing Notice of Appeal **[Section 11 (5) of Courts Act, Act 459] and Agoti v Agbenoku**

Kofi Mensah will have seek leave of the Circuit Court within 21 days of the order and file a Notice of Appeal at the Court of Appeal within 21 days after leave is granted.

B/

- Legal basis

Electoral disputes are filed in Court by way of Petition.

The validity of an election to Parliament may be questioned only by a petition. In addition, every election petition shall be presented before the High Court for hearing **[(Section 16 Representation of Peoples Law, 1992 (PNDCL 284)]**

- Time:

A parliamentary electoral dispute shall be presented within **21 days** after the date of the publication in the Gazette of the results of the election to which it relates **(Section 18 PNDCL 284 and the [Republic v High Court Koforidua, Ex Parte Asare (Baba Jamal Interested Party)]**

- **Forum**

The petition shall be filed at the High Court. An appeal from the High Court goes to the Court of Appeal and there is no further appeal to the Supreme Court. (**In Re Parliamentary Elections for Wulensi**)

- **Capacity**

Section 17—Presentation of Election Petition.

An election petition may be presented by one or more of the following persons—

(a) a person who lawfully voted or had a right to vote at the election to which the petition relates;

(b) a person claiming to have had a right to be elected at the election;

(c) a person alleging himself to have been a candidate at the election;

(d) a person claiming to have had a right to be nominated as a candidate at the election

Given that Yaw Mpata was a candidate in the election and alleging to have the right to be elected he has capacity to file a Petition at the High Court

C

A probate action (Order 66 R 32)

A probate action is an action commenced with writ for any of the following

- Grant of probate or letters of administration of a deceased person
- For the revocation of grant of probate or letters of administration
- For an order or judgement pronouncing for or against the validity of a Will

Administration action (Order 66 R 44)

This is an action in aid of the administration of the estate of a deceased person under the direction of the court or for the execution of a trust created by a Will under the direction of a court.

Administration action is that action which is brought to court for direction as to how an estate of a deceased should be administered to ensure that justice is done.

It is brought for any of the following reasons

- A. Any question or matter arising in the administration of the estate of a deceased person or in execution of a trust created by a will
- B. Any question or issue as to the composition of class of person having claim against the estate of a deceased or beneficial interest in a property
- C. Any question as to the rights or interest of any person claiming to be the creditor of the estate of a deceased person

Administration action is under the direction of the court while probate action is not under the direction of the court

D

The Court shall upon application by any party affected by a default judgement set aside or vary such judgement on terms, as it deems fit or just. This is applicable in the following circumstances

1. Default of Appearance - Order 10 R 8
2. Default of Defense – Order 10 R 8

There is not time limit for an application for any of the instances above, however such an application must be brought within a reasonable time.

Default judgement is not a final judgement and can be set aside at any time on terms as the court deems fit **(Botchway & Ano v Daniels & Ano)**

QUESTION 5

WRIT OF SUMMONS

09/05/2020

SUIT NO:

**IN THE HIGH COURT OF JUSTICE
KUMASI, ASHANTI**

BETWEEN

GHANA CO-OPERATIVE BANK LIMITED
HOUSE NO. 47
KWAME NKRUMAH AVENUE, ACCRA



PLAINTIFF

AND

1. ABDUL RAHMAN
HOUSE NO. AS. 29 ASAWASI, KUMASI
DEFENDANTS.
2. ALHAJI MOHAMMED BANDA
HOUSE NO. PLOT 44, BLOCK A, ATONSU, KUMASI.



TO ABDUL RAHMAN AND ALHAJI MOHAMMED BANDA.

AN ACTION having been commenced against you by the issue of this writ by the above
–named plaintiff, GHANA CO-OPERATIVE BANK LIMITED.

YOU ARE HEREBY COMMANDED that within EIGHT DAYS after service of this writ on
you inclusive of the day of service you do cause an appearance to be entered for you.

AND TAKE NOTICE that in default of your so doing, judgment may be given in your
absence without further notice to you.

DATED this 9TH day of May, 2020.

Chief Justice of Ghana.

STATEMENT OF CLAIM

The plaintiff's claim is for:

- a) An order for the repayment of the loan amount of GHC 70,000.
- b) An order for the payment of interest on the loan amount commencing from 1st May, 2010 at 25% per annum for a period of two years as agreed in the loan agreement.
- c) An order for the payment of interest on the loan amount at the prevailing commercial lending rate from the date of receipt to the date of final payment.
- d) An order as to the payment of costs.

This writ was issued by:

.....

Plaintiff

Chambers

GUGISSB

Whose Address for Service is:

Chambers

Agent for:

BANK LTD

Lawyer for Plaintiff:

resides in Kumasi.

Signed:

ADELINE TUFFOUR
Solicitor for the

Obra Ye Bona

Hse no OTA 960,

TG Road, Kumasi.

Obra Ye Bona

Hse no. OTA 960, GUGISSB
TG Road, Kumasi.

GHANA CO-OPERATIVE

ADELINE TUFFOUR
Who

Indorsement to be made within three days after service.

This writ was issued by me at (NB: Bailiffs to complete)

On the defendant

On theday of.....

Endorsed theday of.....

Signed.....

Address.....

IN THE SUPERIOR COURT OF JUDICATURE
IN THE HIGH COURT OF JUSTICE
GENERAL JURISDICTION
KUMASI, ASHANTI, AD.2020

SUIT NO:

BETWEEN

GHANA CO-OPERATIVE BANK LIMITED
HOUSE NO. 47
PLAINTIFF/APPLICANT
KWAME NKRUMAH AVENUE, ACCRA

}

AND

1. ABDUL RAHMAN
HOUSE NO. AS. 29 ASAWASI, KUMASI
DEFENDANTS/RESPONDENTS
2. ALHAJI MOHAMMED BANDA
HOUSE NO. PLOT 44, BLOCK A, ATONSU, KUMASI.

}

MOTION ON NOTICE FOR SUMMARY JUDGMENT PURSUANT TO ORDER 14 OF
CI.47, HIGH COURT CIVIL PROCEDURE RULES.

PLEASE TAKE NOTICE that this Honourable Court shall be moved by counsel for Plaintiff/Applicant for an order of summary judgment on the grounds deposed to in the accompanying affidavit, and for any orders that the court may deem fit and just.

COURT to be moved on day of May 2020,, at 9;00am or so soon thereafter as lawyer for the applicant may be heard.

DATED THIS 9TH DAY OF MAY 2020, AT OBRA YE BONA CHAMBERS, HOUSE NO. OTA 960, GUGGISB' TG ROAD, KUMASI.

.....

ADELINE TUFFOUR
SOLICITOR FOR PLAINTIFF/APPLICANT.

THE REGISTRAR
HIGH COURT,
GENERAL JURISDICTION DIVISION
KUMASI.

AND FOR SERVICE ON THE ABOVE NAMED DEFENDANTS/RESPONDENTS.

IN THE SUPERIOR COURT OF JUDICATURE
IN THE HIGH COURT OF JUSTICE
GENERAL JURISDICTION
KUMASI, ASHANTI, AD.2020

BETWEEN

GHANA CO-OPERATIVE BANK LIMITED
HOUSE NO. 47
PLAINTIFF/APPLICANT
KWAME NKRUMAH AVENUE, ACCRA

}

AND

1. ABDUL RAHMAN
HOUSE NO. AS. 29 ASAWASI, KUMASI
DEFENDANTS/RESPONDENTS
2. ALHAJI MOHAMMED BANDA
HOUSE NO. PLOT 44, BLOCK A, ATONSU, KUMASI.

}

AFFIDAVIT IN SUPPORT OF MOTION ON NOTICE FOR SUMMARY JUDGMENT
PURSUANT TO ORDER 14 OF CI.47, HIGH COURT CIVIL PROCEDURE RULES

I, KOFI BABONE of House Number 88, Plot 5 of Kasoa Nyanyano do hereby make oath and swear as follows:

1. I am the Deponent herein.
2. That I am the facility manager of the above mentioned Plaintiff Bank and do depose to the following facts that have come to my personal knowledge in the course of my duties.

3. That on the 14th April 2010, the first Defendant applied for and was granted a loan of GHC70,000.00 by the Plaintiff Bank.
4. That the facility was evidenced by a loan agreement dated 21st April, 2010 duly executed by the first Defendant for a period of 2 years commencing from 1st May 2010 at an interest of 25% per annum. The loan agreement is attached as Exhibit
5. That, by the said agreement duly executed by the 2nd Defendant as well, he agreed to guarantee the payment of the debt and interests thereon by the due date.
6. That, upon the expiry of the due date for the payment of the debt, the Defendants have failed to repay the amount and the accrued interests despite repeated demands and inspite of various promises on their part to do so.
7. That, the 1st and 2nd Defendants respectively wrote letters dated 10th May 2015 and 31st May 2015 pleading for time to repay the debt. Letters of defendants attached as Exhibit
8. That, I am informed by counsel for Plaintiff bank and verily believe same to be true that, the defendants have no reasonable defence to the action. The agreement, bank statements, the letter
9. That, I am informed by counsel for Plaintiff Bank and verily believe same to be true that, summary judgment may be entered on behalf of Plaintiff Bank without trial, after the service of a writ of summons and Statement of Claim on the defendants.
10. That, I am praying this Honourable Court for summary judgment to be entered in favour of Plaintiff Bank against the defendants jointly and severally for the following:
 - a. An order for the repayment of the loan amount of GHC 70,000.
 - b. An order for the payment of interest on the loan amount commencing from 1st May,2010 at 25% per annum for a period of two years as agreed in the loan agreement.
 - c. An order for the payment of interest on the loan amount at the prevailing commercial lending rate from the date of receipt to the date of final payment.
 - d. An order as to the payment of costs.

WHEREFORE, I swear to this affidavit in support of motion for Summary Judgment.



SWORN AT KUMASI

.....

THIS 9TH DAY OF MAY, 2020

DEPONENT

BEFORE ME

.....

EFO EBETUWOTGBOR
COMMISSIONER FOR OATH.

IN THE SUPERIOR COURT OF JUDICATURE
IN THE HIGH COURT OF JUSTICE
GENERAL JURISDICTION
KUMASI, ASHANTI, AD.2020

BETWEEN

GHANA CO-OPERATIVE BANK LIMITED
HOUSE NO. 47
PLAINTIFF/APPLICANT
KWAME NKRUMAH AVENUE, ACCRA

}

AND

1. ABDUL RAHMAN
HOUSE NO. AS. 29 ASAWASI, KUMASI
DEFENDANTS/RESPONDENTS
2. ALHAJI MOHAMMED BANDA
HOUSE NO. PLOT 44, BLOCK A, ATONSU, KUMASI.

}

**CERTIFICATE OF EXHIBIT ORDER 20 r 14(1) (2) and (3) OF C.I.47, HIGH COURT
CIVIL PROCEDURE RULES.**

I, EFO EBETUWOTOGBOR Commissioner for Oath hereby certify that the Exhibits have been exhibited to the affidavit sworn before me.

DATED THIS 9TH DAY OF MAY 2020.

BEFORE ME

.....
COMMISSIONER FOR OATHS

THE REGISTRAR
HIGH COURT
GENERAL JURISDICTION DIVISION.

QUESTION C.

An application for judgment on admission shall be made where a party has admitted an allegation or claim made by the opponent in his or her pleadings. An application for judgment on admission may also be made where in a request made to a party to admit a fact or the authenticity of a document, and the party fails to respond to the request within 14 days or the party admits the facts or authenticity of the document. (ORDER 23 of CI 47)

However, an application for summary judgement is made, when the Plaintiff has reasonable grounds that, the defendant does not have any reasonable defence. This is done after the plaintiff has served a writ of summons and Statement of Defence on the Plaintiff and the Defendant has entered appearance. Therefore with summary judgements, pleadings have not been filed on behalf of defendant neither has there been a request for any admission of facts. (ORDER 14 of C I 47)

QUESTION 6

1. When is a Will proved in Common Form?

ANSWER: Per order 66 rule 25 of C.I 47, A will is proved in common form when the will appears regular and well executed on the face of it and there is no dispute as to its validity and the application for probate is granted on the basis of the affidavit filed deposing to the due extension and attestation of the will and by such other relevant documents as the court may require.

Case in point is *Yankah v. Administrator-General [1971] 2GLR 186* where the court held that a will is proved in common form where its validity is not contested or questioned. The executor or the person entitled to administer the will brings the will to a principal or district registry and obtains the grant notwithstanding the absence of other parties interested, upon his own oath and any further affidavits which may be required.

2. When is a Will proved in Solemn Form?

ANSWER: A will is however proved in Solemn Form where for any reasons the executors doubt the validity of the will or there is a challenge to its validity. The will is proved in solemn form by commencing an action by writ for the court to pronounce on its validity.

Any person interested in the estate may by notice in writing request the named executors to prove the will in solemn form. The notice must contain the following particulars.

1. Name, address and description of the person
2. His interest in the estate and
3. Specific grounds for disputing the will's validity

An executor has 8 days within which to renounce probate or prove the will in solemn form.

The executor shall within 8 days issue a writ claiming that the will be pronounced valid and admitted to probate. The court could suo moto or on application of an interested person join as plaintiff or defendant who claims or appears to have an interest in the estate of the deceased.

**IN THE SUPERIOR COURT OF JUDICATURE
IN THE HIGH COURT OF JUSTICE
SUNYANI- BRONG AHAFO REGION
AD.2020**

Suit No:.....

KOJO MORKEH

House No.58C

Axim-Western Region

(Suing in his capacity as Head of Family
of the Deceased Kwasi Nyameke)

PLAINTIFF

VRS

REV. JAMES EZUAH

House No. AX 19

Axim

(In his capacity as co-executor
of the estate of KwasiNyameke)

1ST DEFENDANT

EBENEZER BLAY

House No.10

Nsiem, Axim

(In his capacity as co-executor
of the estate of KwasiNyameke)

2NDDEFENDANT

STATEMENT OF CLAIM

1. The plaintiff KojoMorkeh is the Head of Family of the deceased KwasiNyameke who hails from Axim in the Western Region and died on the 10th February 2015 at the Sunyani government hospital.

2. The defendants, residents of Axim are the purported executors of the last and testament Will of Kwasi Nyame kedated 21st December, 1992.
3. The Plaintiff avers that the purported last will and deposed by the executors at the high court is not the will and last testament of the deceased Kwasi Nyameke.
4. The plaintiff further avers that the will is not the deed of the deceased, neither did it bear his signature.
5. It is the plaintiff's case that the document does not represent the deed of the deceased Kwasi Nyameke and therefore invalid.
6. WHEREFORE the Plaintiff seeks the following reliefs;
 - i. A declaration that the purported last will of Kwasi Nyameke dated 21st December, 1992 is not valid and of no effect.
 - ii. A declaration the purported executors are prohibited from dealing with any property known or unknown of the deceased Kwasi Nyameke
 - iii. A Refusal of grant of probate to the executors
 - iv. Cost of action

DATED AT XYZ CHAMBERS KUMASI, MAY 10, 2020.

.....
ADWOA MANSAN, Esq
LAWYER FOR PLAINTIFF

THE REGISTRAR
HIGH COURT
SUNYANI

AND COPY FOR SERVICE ON THE DEFENDANT OR THEIR LAWYER

QUESTION 7

- i. I will file an ex parte application to the court for an order of Garnishee Nisi. The order shall in the first instance be an order to show cause and in the meantime attach the amount held in the judgment debtor's account or as much of it as may be specified in the order (i.e. GHS25,000.00), to satisfy the judgment and the costs of the proceedings (i.e. GHS12,500.00).

- ii. **Processes to be drafted**
 1. You apply by a motion ex parte for an order of Garnishee nisi. The application must be supported by an affidavit.

 2. The affidavit shall;
 - identify ***the judgment or order*** to be enforced
 - state ***the amount remaining unpaid*** under it at the time of the application
 - state that to the best of information and belief of the deponent, ***the garnishee is within the jurisdiction***, and is ***indebted to the judgment debtor***, and
 - state the ***source of the deponent's information*** or the grounds for the deponent's belief.

**IN THE SUPERIOR COURT OF JUDICATURE
IN THE HIGH COURT OF JUSTICE
(CIVIL DIVISION)
HO-AD, 2020**

Suit No.....

BETWEEN

ELIZABETH ELINAM

House No. K.T 35
Keta-Volta Region

PLAINTIFF/APPLICANT

AND

SETH MAWUDOR

House No. 45
Anfoega-Volta Region

DEFENDANT/RESPONDENT

MOTION EX PARTE FOR GARNISHEE NISI PURSUANT TO ORDER 47 OF HIGH COURT (CIVIL PROCEDURE) RULES, 2004 (C.I.47)

MOTION EX PARTE that Counsel for the Plaintiff/judgment Creditor will move this court on an application praying the Honourable Court for an order of Garnishee nisi on grounds stated in the supporting affidavit.

AND ANY OTHER order(s) as this court may deem fit.

COURT TO BE moved on Monday May 10, 2020 at 9: 00 o'clock in the forenoon or so soon thereafter as Counsel for Plaintiff may be heard.

DATED AT UBERRI CHAMBERS ACCRA, THIS 9TH DAY OF MAY, 2020.

.....
KOFI TIMBUKTU. Esq
LAWYER FOR PLAINTIFF

THE REGISTRAR
HIGH COURT
HO

**IN THE SUPERIOR COURT OF JUDICATURE
IN THE HIGH COURT OF JUSTICE
(CIVIL DIVISION)
HO-AD, 2020**

Suit No.....

BETWEEN

ELIZABETH ELINAM

House No. K.T 35
Keta-Volta Region

PLAINTIFF/JUDGMENT CREDITOR

AND

SETH MAWUDOR

House No. 45
DEBTOR
Anfoega-Volta Region

DEFENDANT/JUDGMENT

**AFFIDAVIT IN SUPPORT OF MOTION EX PARTE FOR GARNISHEE NISI UNDER
ORDER 47 OF C.I.47**

I, Elizabeth Elinam, of House No. K.T 35, Keta in the Volta Region do make oath and say as follows;

1. That I am the deponent herein.
2. That I obtained judgment on 28th April, 2015 in the High Court, Ho in that sum of GHS125,000.00 with accrued interest of GHS25,000.00 and cost of GHS12,500.00 in an action I instituted against the Defendant/judgment debtor.
3. That notice of entry of judgment has been filed and defendant/judgment has failed to satisfy the debt till date.
4. That on Monday 15th May, 2015, I saw the defendant/judgment debtor withdrawing money from his account at Ghana Commercial Bank, Ho branch.
5. That the garnishee, Ghana Commercial Bank, is within the jurisdiction of Ghana and I verily believe that the Defendant/judgment debtor maintains and operates an account with the Bank.

6. That I pray this Honourable Court for an order of garnishee nisi to freeze the account of the defendant/judgment debtor before he makes further withdrawals from that account.
7. That if this order is not made, the judgment of the court shall be in vain since I have no knowledge of any property of his that I can levy execution against.
8. That the Judgment Creditor accordingly prays for an order directing the garnishee Bank to appear and show cause as to why the monies held in the Judgment Debtor's account should not be paid to the Judgment Creditor.

WHEREFORE I depose to this affidavit in support of the instant motion.

SWORN AT ACCRA THIS 9TH DAY OF MAY, 2020

.....
DEPONENT

BEFORE ME

.....
COMMISSIONER FOR OATH.

- i. As the Lawyer for the judgment creditor, I will first file Entry of Judgment at the Registry of the High Court. This process is to remind the judgment debtor to discharge the obligations under the judgment. It also makes certain the nature of the obligation under the judgment.

Where the judgment debtor fails to satisfy the judgment debt within seven (7) days after the service of the Entry of Judgment, I will proceed to enforce the judgment by execution.

The judgment shall be enforced by the issue of writ of execution. Before the issue of a writ of execution, a request for its issue shall be filled at the Registry of the High Court.

**IN THE SUPERIOR COURT OF JUDICATURE
IN TH HIGH COURT OF JUSTICE
(CIVIL DIVISION)
ACCRA-AD.2020**

Suit No.....

MRS. JANE MENSAH

House No. MD 105
Madina-Accra

PETITIONER

VRS

DR. NATHAN TEI-MENSAH

House No. SL.99,
South Legon, Accra

RESPONDENT

**ENTRY OF JUGMENT PURSUANT TO ORDER 41 RULE 3(1) OF THE HIGH COURT
(CIVIL PROCEDURE) RULES, 2004 (C.I.47)**

Dated and entered the 9th day of May, 2015.

This action having been tried before the Honourable Mr. Justice Ato Quarshie at the High Court of Justice, Accra and the said Mr. Justice Ato Quarshie having on the 1st Day of May, 2020 ordered that judgment as hereinafter provided be entered for the Petitioner.

It is adjudged that the Respondent do pay the Petitioner GHS25,000.00 and his cost of the action assessed at GHS.....

It is further adjudged that execution be stayed foraccording to the judge's discretion.

The above costs have been taxed and allowed at GHS..... as appears by a Taxing Officer's Certificate dated theday of May, 2020.

.....
KOFI TIMBUKTU. Esq

THE REGISTRAR
HIGH COURT
ACCRA

AND COPY OFR SERVICE ON THE RESPONDENT OR HIS COUNSEL.