IN THE HIGH COURT OF JUSTICE GHANA (GENERAL JURISDICTION COURT 4) HELD IN ACCRA ON TUESDAY THE 28TH DAY OF NOVEMBER, 2023 BEFORE HIS LORDSHIP JUSTICE JOHN BOSCO NABARESE

SUIT NO: GJ/0423/2023

DEBORAH SEYRAM ADABLAH :: PLAINTIFF/RESPONDENT
H/NO. GL-010-0745, LABADI - ACCRA

VRS

ERNEST KWASI NIMAKO :: 1ST DEFENDANT/APPLICANT
EMEFS ESTATE

FIRST ATLANTIC BANK :: 2ND DEFENDANT
1 SEVENTH AVENUE, RIDGE WEST, ACCRA

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RULING

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MOTION ON NOTICE TO STRIKE OUT PLEADINGS AND DISMISS ACTION

The 1st Defendant/Applicant (hereinafter referred to as the Applicant) brought the application for an order to strike out the Plaintiff/Respondent (who shall be referred to simply as the Respondent) pleadings and to dismiss the suit for disclosing no reasonable cause of action.

The Applicant's motion is founded upon Order 11 rule 18(1) (a) of the High Court (Civil Procedure) Rules 2004 (C.I 47) which provided that "Striking out pleadings.

11 r 18. The Court may at any stage of the proceedings order any pleadings or anything in any pleadings to be struck out on the grounds that:

(a) it discloses no reasonable cause of action or defense.

(b) it is scandalous, frivolous 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.

(2) No evidence whatsoever shall be admissible on an application under the sub rule 1(a).

It is clear that where the only ground on which the application is made is that the pleading discloses no reasonable cause of action or defense, no evidence is therefore admitted.

The power being invoked under Order 11 rule 18 1(a) is the procedure to dismiss the suit for non-disclosure of cause of action. And it is only when upon the face of it, it is shown that the pleading discloses no cause of action or defence or that it is frivolous and vexatious that the rule applies. It does not take into account affidavits and extrinsic evidence.

See: **(1) *OKOFOH ESTATES LIMITED V MODERN SIGNS LTD. AND ANOR. [1996-97] SCGLR 224***

(2) *GHANA MUSLIMS REPRESENTATIVE COUNCIL V SALIFU [1975] 2 GLR 246*

(3) *HARLEY V. EJURA FARMS GHANA LIMITED [1972] 2 SCGLR 179*

(4) *ATTORNEY GENERAL OF THE DUCHY OF LANCASTER V. LONDON & NORTH WESTERN RAILWAY [1892] 3 CH 174*

On the 23rd day of January 2023, the respondent herein issued a writ of summons against the defendant and First Atlantic Bank (now non-suited by the Court differently constituted), claiming the following reliefs:

(a) An order that the 1st defendant transfers title of car number GC 7899-21 into the name of the plaintiff as the owner.

(b) A refund of cost of repairs of Ghc10, 000.00 which 1st defendant promised to refund to the plaintiff but failed.

(c) An order that the defendant pays the plaintiff the following:

(i) 1st defendant pays lump sum money to the plaintiff to enable the plaintiff start a business to take care of herself as agreed by the plaintiff and the 1st defendant

(ii) 1st defendant pays the remaining two (2) years rent for the plaintiff's accommodation or pay same amount for the remaining two (2) years at the same rate at an alternative accommodation.

(iii) *1st defendant to pay the outstanding arrears of plaintiff 's monthly allowance from July 2022 to the date of judgment and pay all medical expenses as a result of the side effect of the family planning treatment.*

(iv) *General damages against the defendant's*

(d) *Any other reliefs the court deems necessary including legal cost.*

The case of the Respondent is that during her National Service work with the First Atlantic Bank, she and the Defendant entered into a parlor sexual relationship. And this was as a result of a persistent sexual harassment and abuse by the Applicant, a superior officer who wielded a lot of power which she finally gave in. The Respondent stated that her parlor relationship was open and known to almost all the workers of the First Atlantic Bank. The Respondent stated that when her National Service was about to come to an end, the defendant, who had abused his position as a Chief Finance Officer of First Atlantic Bank having harassed her into accepting a parlor relationship, succeeded in persuading her to agree to exit from The First Atlantic Bank when she and her colleagues were about to be engaged as contract employees by the said bank, so that they could continue the parlor relationship at an enticing consideration. The respondent said the applicant having made representation and assurances to generally take care of her, she agreed to engage in the

parlor relationship with the applicant and the applicant also agreed to execute his part of the bargain.

The Respondent further stated that their relationship started having problems when the Applicant wanted to have unnatural carnal knowledge of her but she refused and their differences widened. Indeed, the Respondent said that there were similar requests from the Applicant of varied nature which were not in conformity with societal norms. They then decided to bring an end to the relationship and no agreement could be reached as to payment of some medical bills incurred by Respondent. The Respondent then decided to institute this action.

On the directions of the court, the parties filed their Written Submissions regarding the motion. The Applicant filed his Written Submission on the 23rd day of October, 2023 and followed it with a reply filed on 7th November, 2023, pursuant to leave granted the Applicant. The Respondent however filed her Written Submission in opposition to the motion on the 30th day of October 2023, when she sought leave to do so.

I shall attempt a summary of the various positions put across in the various Written Submissions by the parties. The Applicant's submission is that the Writ of Summons has not been endorsed with a substantive claim or relief that would properly invoke the jurisdiction of the Court. According to the Applicant, the writ of summons and statement of claim in it its instant form is incompetent and to proceed to a full trial will amount to an abuse o of the court's time and resources. Learned Counsel of the Applicant then cited the

case of the **REPUBLC V HIGH COURT, TEMA, EXPARTE OWNERS OF ESCO SPIRIT (DARYA SHIPPING SA INTERESTED PARTY [2003-2004] SCGLR 689**, where the Supreme Court per Date-Baah JSC succinctly stated in part as follows:

> *"... Since the writ had not been endorsed with a substantive claim or cause of action, it was a nullity and no valid orders could be based on it..."*

It is the contention of the Applicant that where statute provides a procedure for doing an act, an obligation is placed on a party to follow the said procedure. See **BOYEFIO V NTHC [1996-97] SCGLR 531** The applicant is therefore of the view that the respondents action should be struck out for failure to comply with the requirement of the law.

Another ground canvassed by the Applicant is that the agreement alleged by the Respondent is unenforceable on grounds that it is contrary to public policy. The Applicant argues that the court will not give the judicial blessings to contracts which sin against public policy and generally regarded as illegal or promoting immorality. The case of **KWARTENG DONKOR [1962] I GLR 20**, was cited to buttress the argument. This case, in part states that:

> *"...no party should be assisted by the court to recover anything or promised to be forgone, which it be a physical thing or an incorporeal right if it was in furtherance of an illegal transaction"*

According to the Applicant the basis of the Respondent's action is in essence, a replication of the assurances he is alleged to have made to the Respondent in exchange for the Respondent to "exit from the bank... so that they could continue the parlor relationship at an enticing consideration".

The Applicant maintained that this action is merely a masqueraded attempt by the respondent to conscript the Court into enforcing a meretricious contract, akin to a commercial sex contract which is repugnant to the norms, values and public policy that underpin our Ghanaian society and to which Courts have since time immemorial refused to lend their support. Learned Counsel for the Applicant then quoted the maxims *"ex turpi causa non oritur actio and" "in pari delicto potior est conditio defendentis"* to wit, no cause of action can arise from an illegal or immoral act, in support of her argument. She said the Courts have over the years been resolute in their refusal to uphold these contracts because they encourage or endorse sexual arrangements that lack the formalities and legal obligation associated with marriage and promote lasciviousness and engender the denigration of the institution of marriage which must not be countenanced.

In his Written Submission Counsel for the Respondent raised a preliminary legal objection on the competency of the motion on notice to strike out the pleadings and dismiss the action. According to him, the application is procedurally wrong, incompetent and defective since it failed to indicate the paragraph(s) of the Respondent's

pleadings the Applicant is attacking and wants same to be struck out as the offending pleadings which disclose no reasonable cause of action or defence.

A case cited by counsel for the respondent on this issue is:

1) **HARRIET MORRISON (NEE BAAH) AND CHARLES CANTAMANTO V. RESGISTERD TRUSTEES VICTORY BIBLE CHURCH AND 3 ORS (2015) GMT 59 AT 38**

It is also the case of Learned Counsel for the Respondent that this Court then differently constituted gave a Ruling on 21st July 2023, where it stated that the generality of the pleadings show the action is really against the 1st Defendant ie. the Applicant herein. He stated that the issue as to whether the action of the respondent does not disclose any reasonable cause of action against the applicant has long been decided by this Court in its ruling on 21st JULY 2023. According to Learned Counsel for the Respondent, the Respondent has by her pleadings demonstrated by a group of operating facts giving rise to some basis for instituting this action and a factual situation that entitles the Respondent to a remedy by way of general damages as indorsed on the Writ of Summons caused to be issued by the Respondent. Counsel then cited the case of **AMPRATWUM MANUFATURING COMPANY LIMITED V. DIVESTURE IMPLEMENTATION COMMITTEE [2009] SCGLR 692**

He said serious points of law and facts have been raised by the parties and are susceptible to argument and this can only be determined by a trial. Counsel for the Respondent also argued that the Courts in

Ghana have entered Judgment for parties for certain reliefs at the end of the case although from commencement of the suits, those reliefs were not expressly being claimed.
Therefore, it will be premature for the Court to summarily terminate the case of the Respondent on the basis of the absence of a "substantive relief" His prayer in sum is that the application is highly incompetent and should be dismissed in limine.

Before proceeding to deal with the main issue in the instant application, I would like to briefly address some technical and peripheral issues discussed in the Written Submission of the Respondent. According to Counsel for the Respondent, the application was not brought up promptly. From the records, the instant application was filed on the 17th of May 2023. When the Applicant filed his defence and counterclaim on 8th February 2023, it was not until on the 26th day of October 2023 that the Respondent filed a reply to the Applicant's defence and counterclaim.

Order 11 rule 18 states clearly that applications of a similar nature may be brought at *"any stage of the proceedings"*. In construing rule 18 of Order 11 of the High Court (Civil Procedure) Rules, 2004, (C.I 47), the Supreme Court held in **GBENARTEY AND GLE V. NETAS PROPERTIES & INVESTMENT & OTHERS [2015-2016} ISCGLR 605, HOLDING 1 & 2**, that:

> *"... the defendant's motion or application to strike out the plaintiff's action could be brought "at any stage of the proceedings. However, the settled practice was that, when*

the offending pleading had been served, the party invoking the jurisdiction to strike out the action must promptly apply to have the pleading struck out. It was clear that the court had discretion to hear the application after the case had been set down for hearing. However like every judicial discretion, it must not be exercised unfairly, without taking all the circumstances of the case into consideration..."

Thus taking all the circumstances of this case into consideration, as stated in the **GBENARTEY & GLE V. NETAS PROPERTIES INVESTMENTS** (Supra), it is not out of place for the instant application to have been brought on 17th May 2023, under Order 11 rule 18 1(a) of C.I 47. At the time, the substantive processes filed were the Respondents Statement of Claim and the Applicant's Statement of Defence. Two interlocutory applications were also filed that needed the immediate intervention of the court. As such since pleadings had not closed, and the matter ripe for hearing, in my view, the application was brought promptly.

Then there is the issue that the application failed to identify specific paragraphs to be struck out. It is the case that the application is titled "**NOTICE OF MOTION: APPLICATION TO STRIKE OUT PLEADINGS AND DISMISS SUIT:**

Under Order 11 rule 18(1) of C.I 47, it 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..."

My understanding is that the Court may order specific pleadings to be struck out or entire pleadings or anything in a particular party's pleadings to be struck out. The important thing is whether the application had any substance regardless of the form in which it was instituted.

See **REPUBLIC V. HIGH COURT, ACCRA, EXPARTE ANYAN (Platinum Holdings, Interested Party) [2007] SCGLR 255 at 259.** The view held by Counsel for the Respondent on this issue cannot be supported taking into cognizance the substance of the application and the discretion given to the Court on such matters. I also do not think the citing of the case **GIHOC REFRIGERATION AND HOUSEHOLD PRODUCTS LTD. (NO 1) V. HANNAH ASSI (NO.1) [2007-2008] SCGLR** is particularly relevant to the resolution of the issue on hand. It is an established fact that the Court may grant an equitable relief though not claimed as every suit implies an offer to do equity.

See **AMAKOM SAW MILLS V MENSAH [1963] 1 GLR 368 SC.**

Then again, Counsel for the Respondent canvassed the argument that this Court, then differently constituted, had on the 21st day of July 2023, given a ruling in relation to an application for an order to strike out portions of the Statement of Claim and dismiss the action

against the then 2nd Defendant which suggested that a cause of action was made against the Applicant herein. Learned Counsel for the Respondent is therefore of the view that the instant application is moot, the Ruling of 21st July 2023 which indicated that the generality of the pleadings in the action are really against the 1st Defendant. This may have been the case, but it does not necessarily mean that the action can be sustained against the Applicant in the instant case. There is no indication anywhere which shows that the Applicant was given the opportunity to respond or react to the said application and he failed or refused to do so for the said Ruling of 21st July, 2023 to be binding on him.

And as rightly pointed out by counsel for the Applicant, whatever pronouncements were made in that ruling were "obiter" ie *"a judicial comment made while delivering a judicial opinion, but one that is unnecessary to the decision in the case and therefore not precedential"*

See: **BLACK'S LAW DICTIONARY, NINTH EDITION, 2009**

To emphasise, that Ruling has no binding effect on the Applicant herein.

Now to the main issue which is that the competency of the action is one of an objection in limine to the writ and the statement of claim. In the determination of this issue as stated supra, it is only the pleadings which are under attack and no affidavit evidence is required. This position has rightly been stated by Counsel in their Written Submissions.

See **OKAI V. OKOE [2003-2004] SCGRL 393**. It must be noted that the power of the Court to strike out pleadings for disclosing no reasonable cause of action is a discretionary power of the court which is to be exercised sparingly and with caution. It is stated in article 296 (a) and (b) of the 1992 Constitution of Ghana that the exercise of discretionary power vested in any person or authority shall *"be deemed to imply a duty to be fair and candid and shall not be arbitrary, capricious or biased either by resentment, prejudice or personal dislike and shall be in accordance with due process of law."*

The question is, do the pleadings or anything in any of the pleadings disclose any reasonable cause of action? The Applicant has invoked the jurisdiction of the Court to strike out any pleadings or anything in the pleadings on the grounds that it discloses no reasonable cause of action or defence. The issue is whether the allegations of facts pleaded could disclose reasonable cause of action that was not frivolous, vexatious so as to avoid the penalty of using summary means to strike out the pleadings by Court. The law is settled and in the often quoted case of

DYSON V ATTORNEY GENERAL [1911] IKB 410, MOULTON LJ opined as follows:

> *"To my mind, it is evident that our judicial system would never permit a plaintiff to be driven from the Judgment seat in this way without any Court having considered his right to be heard except where the cause of action was obviously and incontestably bad."*

See: 1. **TACKIE VRS BAROUDI [1977] 1 GLR 36, CA**

2. **GHANA MUSLIMS REPRESENTATIVE COUNCIL V. SALIFU** (Supra)

The Court must satisfy itself that there is no reasonable cause of action raised on the pleadings and that the proceedings are frivolous and vexatious before applying its discretionary power.

On the 21st of July 2023, this Court then differently constituted gave a Ruling in which it non-suited First Atlantic Bank, then the 2nd defendant and struck out paragraphs 7,8,9,10,11,31,32,33,34,36 and 37 of the statement of claim as they are deemed not to disclose any reasonable cause of action against the 2nd defendant. The effect of that Ruling as indicated, supra is that it is binding on the 2nd defendant and the then 2nd defendant alone.

Having said that, it is for the Court to examine critically the Statement of Claim together with the Writ of Summons filed by the Respondent for a determination to be made as to whether they disclose a cause of action. The term "cause of action" has been explained in **SPOKESMAN (PUBLICATIONS) LTD V ATTORNEY GENERAL [1974] IGLR 88**, that:

> *"a party had a cause of action when he was able to allege all the facts or a combination of facts necessary to establish his right to sue"*

There may be situations however when a pleading would only be struck out where it was apparent that the plaintiff was not entitled to the relief sought even if the facts were proved. There may also be

the situation that the Statement of Claim may be weak but so long as it discloses a reasonable cause of action that claim cannot be struck out summarily.

It is the case of counsel for the Respondent that the Writ of Summons and Statement of Claim of the Respondent discloses a reasonable cause of action against the Applicant. According to him, the writ of summons is not frivolous or vexatious and same raises triable issues and evidence has to be led to determine the issues at stake and the Court should not exercise its discretionary power to summarily strike out the pleadings of the Respondent.

On the other hand, Counsel for the Applicant is of the view that the Writ of Summons and Statement of Claim should be struck out as it discloses no reasonable cause of action on the grounds that the Writ of Summons is not endorsed with a substantive relief and significantly, that the agreement which the respondent seeks to enforce is a sexually immoral act which is unenforceable as same is contrary to public policy.

In the present action, the Respondent's Writ of Summons was indorsed with some reliefs. According to the Respondent, the Applicant made representations and assurances to her to give to her the following;

1. *Lump sum working capital to start a business*
2. *Pay for her accommodation/rent for 3 years*
3. *Buy her a car*
4. *Pay her GH¢3,000.00 a month.*
5. *Buy her a ring*

6. *Pay her Medical and other Bills including paying for her to undergo family planning treatment so that she will not give birth in a short term.*

7. *To marry her after divorcing his wife in the course of their parlor relationship since the Applicant's relationship with his wife was challenged with irreconcilable differences and the marriage had broken down beyond repairs and or reconciliation.*

8. *Generally to take care of the Respondent.*

The High Court (Civil Procedure) Rules, 2004, C.I. 47, provide a number of mandatory provisions on how Writs of Summons should be endorsed. Order 2 rule 2 of C.I 47 provides that:

> *"subject to any existing enactment to the contrary all civil proceedings shall be commenced by the filing of a Writ of Summons"*

And rule 3(1) states that;

> *"Every writ...shall be endorsed with a statement of the nature of the claim, relief or remedy sought in the action"*
>
> *"It is a well established principle of law or procedure that every endorsement on a writ of summons must show the nature of the cause of action against the defendant"*

See **COMPTROLLER OF CUSTOMS AND EXCISE V. COKER [1975] 2 GLR 246, CA.**

The Respondent is claiming a number of reliefs. The issue is what is the basis for the Respondent's claim? Is the claim grounded in a breach of contract entered into between the parties or does any legislation give a right to the Respondent to claim those reliefs? It is my view that the Applicant is entitled to know the case against him. Learned Counsel for the Respondent in his Written Submission tried to justify the basis for the Respondent's claim and therefore a cause of action against the Applicant.

He stated and I quote in part as follows;

> *"...these two senior officers holding management positions at the 2nd defendant's bank, and during a working day at working hours, the Head of 2nd defendant security together with the applicant the Chief Finance Officer of the 2nd defendant in a Rambo Style led police who invaded, besieged and violated the privacy of the respondent, forcefully took her car and towed same to the police station on an alledged report of stealing when they both knew the respondent did not steal same. The respondent in her pleadings indicated that she was by that conduct embarrassed and perpetually shocked and same lowered her reputation before the right thinking members of her community, Labadi-Lamptey George where members of her community came to watch her being portrayed as a thief for stealing a car when in actual (sic) same was untrue. This definitely grounds a cause of action against the defendant and the relief or remedy flowing therefrom is General Damages if not punitive and exemplary..."*

He added that *"the 1st defendant (applicant) has failed to carry through their understanding, arrangements, promises and or agreement, and the Court should compel the Applicant to honour his part of the bargain".*

I shall return to consider this issue of "the bargain" between the Respondent and Applicant.

It is the submission by Counsel for the Applicant however, that there must be a substantive relief endorsed on the Writ of Summons to properly invoke the jurisdiction of the Court. She stated that all the reliefs endorsed in paragraph 38 of the Respondent's Statement of Claim do not stem from a substantive relief. She contended that the statement of claim in its current form is incompetent and for the case to proceed to a full trial will amount to an abuse of judicious use of the Court's time and precious resources.

Learned Counsel for the Applicant cited the following cases in support of her argument

1. **ROCKSON V ILONS SHIPPING COMPANY S.A AND ANOR (CIVIL APPEAL NO J4/13/2007), delivered on 10th February, 2010.**
2. **REPUBLIC V HIGH COURT TEMA; EXPARTE OWNERS OF MV ESCO SPIRIT (Supra)**

She submitted that, going by the Principle in **BOYEFIO V NTHC** (Supra), the position of the law is that;

> *"...where an enactment had been prescribed as special procedure by which something was to be done, it was that procedure alone that was to be followed"*

See also: **NATIONAL HEALTH INSURANCE AUTHORITY V GEORGE M. OSEI & 4 OTHERS [2011] GMJ 117 CA.**

This argument by Counsel for the Applicant was parried by the submission of Counsel for the Respondent that the Writ of Summons ought to be read together with the Statement of Claim in order to determine if there was any cause of action before the Court. He also maintained that failure by a party to endorse a substantive relief on a writ does not automatically nullify the writ on the basis of the absence of a reasonable cause of action. He said such a defect can be cured through an amendment. He referred to the case of **ALEX COMPANY LTD V. KWAME OPOKU AND 2 OTHERS, CIVIL APP NO JA/23/2008 dated 19th July, 2012.**

Much as I accept that the rules of Court provide specific procedures to be adopted to invoke the jurisdiction of the Court in certain matters, I am also not oblivious of the fact that non-compliance with the rules of Court may not necessarily be fatal to the case of a party. An amendment to the Writ of Summons or Statement of Claim or any process may be sought and the Court may grant same under certain conditions or circumstances. I am also aware that a well-prepared Statement of Claim would cure defects in an endorsement. See

1. **BONSU V FORSON [1962] 1 GLR 139.**
2. **OPOKU & OTHERS NO.2 V AXES CO LTD (NO.2) [2012] SCGLR 1214**

The issue is, whether or not the Writ of Summons has been endorsed with a substantive relief or remedy sought in the instant action. An

amendment of a writ or statement of claim will not cure a pleading which does not disclose reasonable cause of action. See **DEEGBE V. NSIAH AND ANOTHER [1984-86] 1 GLR 545.**

Learned Counsel for the Respondent has canvassed the argument extensively that, for instant, general damages as a relief may be awarded for a loss that is incapable of precise estimation such as pain and suffering or loss of reputation. He said the Respondent complained about the conduct of the Applicant in retrieving Honda Civic Vehicle with Registration Number GC-7899-21 where the Respondent alleged members of her community came to watch her being portrayed as a thief for stealing a car when it was untrue.

Be that as it may, having included general damages as a relief or remedy, Respondent ought to have provided evidence in support of the claim and to give facts upon which general damages could be granted. This was not done. The relief of general damages must flow from the alleged injury or damage that has been suffered for which general damages may be awarded. It cannot stand in isolation as in the instant case. It has no leg to stand on, just like the other reliefs. The defect has also not been cured by the averments in the Statement of Claim. Therefore, the failure of the Respondent to endorse a substantive relief on the Writ of Summons, for that matter, the Court cannot grant any relief or an auxiliary order or relief such as general damages that does not arise out of any injury or damage against the Respondent or for any breach of contract committed by the Applicant.

Now to the issue of the agreement alleged by the respondent to the effect that the applicant promised or agreed to provide her with alternative and more attractive package than for the respondent to continue as a contract staff with First Atlantic Bank, *"so that they continue the parlour relationship at an enticing consideration."*

The Respondent stated that she agreed to exit the First Atlantic Bank and not take up the contract upon the assurances and representations made by the Applicant to her. Some of the promises to the Respondent which were allegedly made by the Applicant which have been stated supra included the following to give respondent a lump sum working capital; pay respondent's rent for 3 years; buy respondent a car; pay respondent GH¢3,000.00 per month; buy respondent a ring, among others.

According to Counsel for the Respondent, both parties started fulfilling their part of the bargain until their relationship turned sour and they decided to part ways.

However, when the Applicant failed to honour his part of the bargain, the Respondent resorted to the Court for the redress of her grievances.

It is the case of the Applicant that the alleged agreement with the Respondent is unenforceable on the grounds that it is contrary to public policy. Counsel for the Applicant submitted that there are judicial decisions that the Court should not give judicial blessings to contracts which sin against public policy.

See: **KWARTENG V. DONKOR [1962] 1 GLR 20.**

In **AMPOFO V FIORINI [1981] GLR** Ansah Twum J at page 385 tried to explain what Public Policy is. He said;

> *"Although the term 'Public Policy' has been held to be an unruly horse on which the rider must be wary, yet as held in Fender v Mildmay [1937] ALL ER 402, though the doctrine of Public Policy should be invoked only in clear cases, in which the harm to the public is substantially incontestable and does not depend upon the idiosyncratic inference of a few judicial minds, yet where the promise is to do something contrary to Public Policy, or to do a harmful thing, or where the consideration for the promise is the doing or the promise to do a harmful thing, a Judge, though he is on slippery ground, at any rate, has a chance of finding a footing. The doctrine does not extend only to harmful acts, it has to be applied to harmful tendencies also. A contract has harmful tendencies if it generally affords a motive which is likely to be effective."*

In her book *"The Law of Contract in Ghana"* first published in 2011, the learned author Christine Dowuona-Hammond, stated at page 252 that:

> *"Generally, any contract which directly or indirectly promotes sexual immorality or which is 'contra bonos mores' is treated by the law as illegal on grounds of Public Policy. Such contracts fall under the category of contracts*

which are contrary to good morals. On this basis an agreement which directly or indirectly promotes prostitution is unenforceable by the courts on being contrary to Public Policy".

See **PEARCE AND ANOTHER V. BOOKS 14 W.R. 614; [1866] L.R. 1 EX.213; 14LT. 288.**

A closer look at paragraph 13 of the Respondent's Statement of Claim clearly indicates that she agreed to exit the First Atlantic Bank so that she could have the opportunity to continue the parlor relationship with the applicant at an enticing consideration. That is the true object of the respondent's claim.

Counsel for the Respondent asked rhetorically the following questions in his written submission;

1. *What has repairing a car and asking for a refund of the monies got to do with an illegal contract?*
2. *What has a manager at a workplace harassing a National Service Personnel and promising or agreeing to provide her with alternative and more attractive package than her workplace got to do with an alleged illegal and unenforceable contract?*

The law is settled that any agreement which has as its object future illicit sexual relations is bad, as it is a contract to promote sexual immorality. Hence a promise to pay monthly allowance to a mistress, ie GH¢3,000.00 monthly allowance to the respondent in this case, even if made by deed under seal, would be void. So also a contract which though seemingly innocent, has, to the knowledge of the

parties, an immoral motive would also be void. See **PEARCE V. BROOKS** (Supra).

In **UPFILL V. WRIGHT [1911] 1 KB 506**, the plaintiff, through his agent, let a flat to a woman, the defendant. At the time of letting the agent knew that the defendant was the mistress of a certain man and that the rent of the flat would be paid with the money of the man who kept her. The money would be given to her as the price of her allowing the man to visit her and commit fornication with her. The plaintiff sued the defendant for rent. The County Court Judge gave Judgment for the plaintiff. On appeal Darling J said;

> *" I have always considered it as settled law that any person who contributes to the performance of an illegal act by supplying a thing with the knowledge that it is going to be used for that purpose cannot recover the price of the thing so supplied...Nor can any distinction be made between an illegal and immoral purpose; the rule which is applicable to the matter is, 'ex turpi causa non oritur actio', and whether it is an immoral or an illegal purpose in which the plaintiff has participated, it comes equally within the terms of that maxim, and the effect is the same; no cause of action can arise out of either the one or the other"*

In his Judgment allowing the appeal Bucinil J said, among other things, that;

> *"...In that state of things the question is whether the contract is affected by the taint of immorality....It seems to me to be clear that it is affected by the taint of immorality. If a woman takes a house in order to live in it as a mistress*

of a man and use it for that purpose, and the landlord at the time when the lease is executed knows that it is taken for that purpose, the landlord cannot recover the rent. He could not obtain specific performance of an agreement for a lease in such a case, nor could he sue upon it, as the law will not allow a contract which is tainted with immorality to be enforced. It was urged that prostitution is one thing, and living as one man's mistress is quite a different thing. They may differ in degree, but they both stand upon the same plane"

Applying the principles in the above cases to the present case, one has to see whether the circumstances surrounding the Respondent's claim and attributable to an agreement or a bargain between the parties for them to continue in their parlour relationship with an enticing and mouthwatering consideration was either illegal or immoral.

In her own pleadings the respondent said she was engaged in this unholy and unhealthy work relationship, and that it was the order of the day. The accommodation or the rent for 2 years for the respondent, the purchase of a car for the Respondent, to pay the respondent a monthly allowance and other things that were allegedly promised the Respondent, were done for the purpose of enabling her to receive the visits of the Applicant whose mistress she was and to commit fornication with him. Indeed, I do not think that it makes any difference whether the Respondent is a commercial sex worker or a common prostitute or whether she is merely the mistress of one

man. The accommodation that is allegedly being promised or its rent payment to be provided for 2 years by the Applicant, is for the purpose of committing the sin of fornication and such is illegal in the sense that it is contrary to Public Policy and it is immoral. Indeed, in paragraphs 23 and 24 of the Respondent's Statement of Claim, this is what she averred;

> *" 23. The plaintiff averred that lately she started having problems with the 1st defendant over differences in the way they should continue with their relationship. 1st defendant wanted to have unnatural canal knowledge of the plaintiff but plaintiff refused...*
>
> *24. Plaintiff avers that there were similar requests from the 1st defendant of varied nature which were not in conformity with societal norms...."*

I am therefore of the view that whatever the Respondent sought to benefit was her participation in an illegal and immoral act with the Applicant by being in a parlor relationship for financial consideration or gains, a relationship, the act of which was not, according to the Respondent herself, in conformity with societal norms. There is nothing, absolutely nothing glaring on the face of the pleadings that the Respondent has been able to point a single act performed outside the provision of sexual services or acts incidental thereto which included her duties in her parlor relationship with the Applicant. Therefore, the case comes within the rule that out of a forbidden or immoral act no cause of action can arise.

In the result, I will uphold the submission by Counsel for the Applicant. The application to strike out the Respondent's pleadings and dismiss the action is hereby granted.

(SGD.)

H/L JOHN BOSCO NABARESE
JUSTICE OF THE HIGH COURT

COUNSEL:

1. *MOHAMMED ATTAH – FOR PLAINTIFF/ RESPONDENT PRESENT*
2. *AMA OPOKU AMPONSAH (MRS) – FOR DEFENDANT/ APPLICANT PRESENT*

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REGISTRAR
HIGH COURT
CRIMINAL COURT
COURT COMPLEX
29/11/2023