THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA- AD 2019

CORAM: GBADEGBE JSC (PRESIDING)

BENIN JSC

APPAU JSC

PWAMANG JSC

KOTEY JSC

CIVIL APPEAL
NO J4/ 47/ 2019

4TH DECEMBER, 2019

BENJAMIN YAW OSEI …….. PLAINTIFFS

VRS

1. THE CHIEF JUSTICE ……DEFENDANTS
2. JUDICIAL COUNCIL
3. THE ATTORNEY GENERAL

JUDGMENT

This is an appeal against the interlocutory ruling of the Court of Appeal dated 28/02/2019. The appeal is a second one filed by the plaintiff in the trial High court after his first appeal to the Court of Appeal did not find favor with the court.

The facts are that, at a case management conference during application for directions, the plaintiff objected to the admissibility of a document attached to the written statement of defendants' witness. The preliminary objection was that the document, which the defendants had filed at the registry of the

court in compliance with Rule 7A of Order 32 together with the witness statement of defendant's witness, was not admissible and therefore should not be adopted by the court as part of the documents to be relied on by the defendant at the trial. The reason for saying the document was not admissible was that it contained material that was prejudicial to plaintiff's case.

The judge overruled the preliminary objection and held that the document was relevant and therefore admissible without the portions which plaintiff said would be prejudicial to his case. The trial judge accordingly ordered for the cancellation of the portions in the document which had no relevance to the plaintiff and accepted it as a document which could be tendered at the trial. The plaintiff appealed against the judge's ruling to the Court of Appeal and the Court of Appeal dismissed the appeal, affirming the High Court ruling. The appeal before us is basically against the affirmation of the High Court ruling by the Court of Appeal notwithstanding the fact that plaintiff stated as many as fifteen grounds of appeal in both his notice of appeal filed on 11/03/2019 and additional issues filed on 18/03/2019.

We have considered the submissions made by both parties and we do not find any merit in the appeal. We do not find any error on the part of the trial judge in accepting the document in question marked Exhibit 4, as a relevant document that could be tendered by the defendant during the trial, less the portions ordered to be expunged or cancelled by the trial court. Whether the text of the document is credible or authentic is a matter that could be determined by the trial court during the trial. Plaintiff's objection to the document at the case management conference was therefore premature and the trial judge was right in dismissing same. We accordingly dismiss the appeal and affirm the decision of the Court of Appeal.

On the issue as to whether or not the 1st and 2nd defendants are necessary parties to the suit, both parties did file their written submissions as directed by this Court. Whilst plaintiff is of the view that the 1st and 2nd defendants are necessary parties; the defendants think otherwise. On the strength of the authorities of this Court expressed in cases like **TSATSU TSIKATA v CHIEF JUSTICE & ATTORNEY-GENERAL [2001-2002] SCGLR 437** and **AMEGATCHER v ATTORNEY-GENERAL (No.1) & Others [2012] SCGLR 679**, we contend that from the nature of the reliefs sought by the

plaintiff, which are all declaratory reliefs, the 1st and 2nd defendants are not necessary parties to the action. The fact is that their position and that of the 3rd defendant on the issues before the Court do not conflict in any way. The 1st defendant acted in her administrative capacity as the head of the judiciary in dismissing plaintiff but not in her personal capacity. Her official act, which is presumed to have been regularly performed, is that of the State. Her defense could therefore be taken care of by the 3rd defendant who represents the State in all civil and criminal actions by virtue of article 88 (5) of the Constitution, 1992. The 2nd defendant is also in the same boat with the 1st defendant. It is a Council with a large composition of eighteen (18) members established under the authority of the Constitution, 1992. It derives its power from article 154 of the Constitution. It has no authority to sue or be sued so any suit against the 2nd defendant must be directed against the 3rd defendant. We therefore order that the names of the 1st and 2nd defendants be struck out from the suit since they are not necessary parties.

Y. APPAU

JUSTICE OF THE SUPREME COURT

N.S. GBADEGBE

JUSTICE OF THE SUPREME COURT

A.A. BENIN

JUSTICE OF THE SUPREME COURT

G. PWAMANG

JUSTICE OF THE SUPREME COURT

PROF N. A KOTEY

JUSTICE OF THE SUPREME COURT

COUNSEL

JOE ABOAGYE DEBRAH FOR THE APPELLANT.

MRS STELLA BADU (CHIEF STATE ATTORNEY) FOR THE DEFENDANTS BEING LED BY GODFRED YEBOAH-DAME (DEPUTY ATTORNEY GENERAL)