IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT
ACCRA

CORAM: AKUFFO, JSC (PRESIDING)
DR. DATE-BAH, JSC
ANSAH, JSC
ANIN YEBOAH, JSC
BAFFOE-BONNIE, JSC

CIVIL APPEAL
J4/13/2007
10TH FEBRUARY, 2010

EMMANUEL ROCKSON
H/NO. SCH.82 CHAPEL HILL TAKORADI **... PLAINTIFF/RESPONDENT/APPELLANT**

VRS

1. **ILIOS SHIPPING COMPANY S.A.**
   411 AKTI MIAOULI STREET 185-35 PIRAEUS
   GREECE
2. **WILTEX LTD.**
   BLACK STAR LINE BUILDING
   TAKORADI

) ... DEFENDANTS/APPELLANTS/RESPONDENTS

J U D G M E N T

DR. DATE-BAH, JSC:

On the 4th of July 2003, the plaintiff mariner filed a writ at the High Court, Sekondi, endorsed with the following claim:

"i) Order that the Cyprus affiliate F T PAW, settles the Plaintiff's claim per the Collective Insurance Policy of International Transport Workers Federation (I.T.W.F.)

ii) 35% Interest on the sum payable from 1st November 2001 to date of payment."

This Writ was accompanied by a Statement of Claim containing the facts set out below. Since the defendants have not filed a defence, but have rather contested the plaintiff's claim as a matter of law, this case has come to us on the basis only of the plaintiff's averments. The facts tell a sad story, but the sadness of the story cannot legitimately be allowed to affect the correct legal analysis of the case before us.

The plaintiff mariner worked aboard the M/V Dynamic, a Greek registered vessel owned by the first defendant and sailing under a Cyprus flag. The second defendant is the correspondent agent of the first defendant in Ghana and carries on the business of marine surveyors and the verification of information relating to the staff welfare of its clients.

On or about 24th September 1999, the plaintiff, while on duty aboard the M/V Dynamic, then anchored in Beirut, sustained injuries whilst dismantling a piston in the engine room of the ship under the supervision of a Superintendent Engineer. The plaintiff contends that the first defendant failed or neglected to provide a safe system of employment for the Plaintiff on board the ship. As a result of his injuries, the plaintiff could no longer continue with his work on the vessel. He was treated initially at a hospital in Beirut, but was later repatriated to Ghana, where he continued his treatment at Effia Nkwanta Hospital. The first defendant sent the plaintiff one thousand US dollars to help defray the cost of his medical treatment. His doctor at Effia Nkwanta, after examining him and treating him, wrote a report which assessed the plaintiff's disability as an oiler merchant seaman at 65 per cent. When this report was submitted to the first defendant, it referred the plaintiff's claim to the second defendant for processing as a Protection and Indemnity (or P & I) claim. When, after an extended series of correspondence between the plaintiff and

the first defendant, the plaintiff received no redress or compensation for his injuries, he caused the writ already described to be issued.

After the issue of the writ, the plaintiff applied for leave, under Order 11, rule 1(g) and 4 of the High Court (Civil Procedure) Rules 1954, LN140A to serve the writ on the first defendant outside the jurisdiction. His Lordship Dotse J., as he then was, granted the leave on 28th July 2003, for the writ to be served on the first defendant in Greece. The defendants entered a conditional appearance and then applied to strike out the plaintiff's action under order 12 rule 24 and order 25 rules 2,3 and 4. The defendants' argument was that the plaintiff was estopped *per rem judicatam* from relitigating this matter since the plaintiff had instituted a similar action at the High Court, Sekondi, which had been dismissed. The defendants maintained also that the writ of summons in the present case and the order authorising its service were irregular, incurably bad in law and therefore null and void. In a ruling dated 16th February 2004, Dotse J identified the issues for determination before him as follows:

> "1….whether or not under the principle of law established in the case of *Okofoh Estates v Modern Signs Ltd.* [1996-97] SCGLR 224 at p. 225 the instant application by the Defendants to strike out the Writ of Summons even though they have not filed any pleadings can be sustained.
>
> 2. Whether or not this High Court, or for that matter the Ghana Courts have jurisdiction in the matter in view of the provisions of Exhibit B, which is the "SEAMANS EMPLOYMENT AGREEMENT" which has expressly stated that the said Agreement shall be governed by the law of Cyprus to the exclusion of any foreign legislation.
> 3. Whether or not the action herein is statute barred having regard to the Limitation Decree, N.R.C.D. 54 of 1972.
> 4. Whether or not the Plaintiff's action herein is affected by estoppel per rem judicatam by virtue of the Ruling of the Court delivered on 2/6/03 in Suit No. CS. 175/02.

5. Whether or not the reliance by the Plaintiff on Insurance effectively puts (*sic*) and or ousts the jurisdiction of the court in view of the fact that negligence ought to be determined before Insurance compensation can be pursued against the Insurance company."

Dotse J reached the conclusion that he could not strike out the plaintiff's writ without relying on extrinsic evidence that had been deposed to on behalf of the defendants. However, he considered that the Supreme Court decision of *Okofoh Estates v Modern Signs Ltd.(supra)* precluded him from doing so. Accordingly, he held that the defendants' application was premature and he dismissed it.

The defendants appealed against this Ruling to the Court of Appeal, which reversed the ruling of the High Court and upheld the appeal. It is not necessary to enter into the full merits of the judgment of the Court of Appeal, since in this Court we are inclined to rely on a different point altogether to determine this appeal.

When the matter came before this court, we noticed that no cause of action was endorsed on the Writ of Summons and that, by a binding precedent of this Court, this meant that the writ was a nullity. Since this point had not been argued in the courts below, we invited counsel for the parties, when they appeared before us on 6th May 2009, to submit fresh written submissions on this issue before 20th May 2009. Fresh submissions were indeed filed by counsel and their arguments have been taken into account in reaching this Court's decision. Counsel were also given an opportunity to address us orally on this point.

The supplementary submissions filed by the appellant were woefully inadequate in addressing the issue identified by this Court. The submissions aimed at establishing that the Appellant has a cause of action. That cause of action was claimed to be based on workmen's compensation arising from injuries sustained by the plaintiff while working on a ship that is covered by a collective insurance policy taken out by the first defendant to cover its employees. This contention, however, does not address the right issue, which is: is the Writ of Summons endorsed with a cause of

action? There was no attempt by the appellant to respond to this issue. The only halting step in this direction was his indication that there was pending before the High Court a motion on notice for leave to amend the Writ. The appellant appended to his supplementary submission a photocopy of a motion filed on 5th January 2007. No further information was provided as to the fate of this motion. Counsel for the defendants/respondents denied orally before this Court that there was any matter pending before the High Court. In any case, even if there were such pendency, it would not be a sufficient answer to the flaw in the writ, as it continues to stand. Finally, the plaintiff/appellant asserted that *Republic v High Court, Tema;Ex parte Owners of MV Esco Spirit (Darya Shipping SA Interested Party)*. [2003-2004] SCGLR 689, which will be discussed shortly, is inapplicable to this case as its facts are clearly distinguishable from the instant case. The submission did not elaborate on how the two cases were distinguishable.

The respondents, in contrast, addressed the issue raised *suo motu* by the Supreme Court. They argued that the appellant's writ of summons does not disclose a cause of action and was thus a nullity. This is an issue that is settled by a binding precedent from this Court. That case is *Republic v High Court, Tema;Ex parte Owners of MV Esco Spirit (Darya Shipping SA Interested Party)*. [2003-2004] SCGLR 689. In that case, the plaintiffs issued a writ of summons endorsed with only a claim for an order to furnish sufficient security for an award in arbitration proceedings which were pending between the parties in London. The Supreme Court unanimously held that, since the writ had not been endorsed with any substantive claim or cause of action, it was a nullity and no valid orders could be based on it. Dr. Twum JSC, delivering the judgment of the Court, explained (at p. 697) that:

> "In our view, the writ was not indorsed in accordance with the mandatory provisions of the High Court (Civil Procedure) Rules, 1954. It was therefore a nullity upon which no valid orders could be based: see *Mosi v Bagyina* [1963] 1 GLR 337, SC. "

His Lordship further expatiated on the Court's position as follows (at pp.694-5):

> "Our High Court (Civil Procedure) Rules, 1954 (LN 140A), provide a number of mandatory provisions on how writs of summons should be indorsed. We consider that the following are relevant for our decision:
>
> > Order 2 r 1 requires that every action in the High Court shall be commenced by a writ of summons which *shall be indorsed* (our emphasis) with a statement of the nature of the claim made or of the relief or remedy required in the action.
> >
> > Order 2 r 3 requires that the writ of summons for the commencement of an action *shall* (our emphasis) except in the cases in which any different form is hereinafter provided, be in one of the Forms Nos. 1 and 2 in Appendix A Part 1 with such variation as circumstances may require.
> >
> > ...
>
> These Forms are, of course, part of the rules and they are mandatory, not permissive. A careful study of them clearly shows that the indorsement on a writ of summons must indicate the general nature of the *cause of action* against the defendant. The Forms referred to in Order 2,rr 3 and 6 and Order 3, r2 are designed to enable the defendant to know, at least, in *very general terms*, the substantive action being brought against them."

There is little doubt that the *ratio decidendi* of this case covers the facts of the case before us. It is impossible to interpret the endorsement on the writ of summons in the case before us as disclosing any cause of action. Accordingly, the writ is a nullity and, likewise, the proceedings based upon it. It is thus unnecessary for this Court to enter into the merits of the other arguments rehearsed by or before the Court of Appeal. The appeal is therefore dismissed.

DR. DATE-BAH
JUSTICE OF THE SUPREME COURT

S. A. B. AKUFFO (MS)
JUSTICE OF THE SUPREME COURT

J. ANSAH
JUSTICE OF THE SUPREME COURT

ANIN YEBOAH
JUSTICE OF THE SUPREME COURT

P. BAFFOE-BONNIE
JUSTICE OF THE SUPREME COURT

COUNSEL:

EBOW QUASHIE ESQ. FOR THE PLAINTIFF/RESPONDENT/APPELLANT.

JOHN MERCER ESQ. FOR THE DEFENDANTS/APPELLANTS/RESPONDENTS.