IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT OF GHANA
ACCRA, GHANA

CORAM: J. ANSAH JSC (PRESIDING)

CIVIL MOTION
J8/85/2012

25TH SEPTEMBER, 2012

RANSFORD FRANCE ... PLAINTIFF/RESPONDENT

VERSUS

1. ELECTORAL COMMISSION
2. ATTORNEY-GENERAL ... DEFENDANTS/RESPONDENTS

[APPLICATION FOR JOINDER]

R U L I N G

ANSAH JSC:

This is an application for an order of joinder to the substantive matter in this suit seeking an order of this court to invoke the original jurisdiction of this court for certain declarations, as either a plaintiff or a defendant. The application was opposed by the plaintiff but the Electoral Commission and the Attorney-General did not. Counsel for the said he wants the matter to be heard between the applicant and the respondent.

In his submissions before this court, counsel for the applicant stated he brought the application under Rule 45 (4) of the Supreme Court Rules 1996, C.I. 16. It reads:

"(4) The Court *may*, on its own motion or on the application of a party, order that any other person shall be made a party to the action to or in substitution for any other party."

The rule just quoted is under Part 4 of CI 16, which deals with the Original Jurisdiction of this court which has been invoked by the plaintiff in the substantive action, seeking several declarations from this court, under articles 2 (1) and 130 1(a), of the 1992 Constitution.

By the use of the word *'may'*, in this rule in Rule 45 (4), the court has the discretion to grant or refuse the application. Therefore, the question is should the application be granted or refused?

The substance of the submissions of counsel for the applicant was a virtual repetition of the depositions in his affidavit in support of the application.

I quote the salient paragraphs here now:

"2. That it has come to my notice that a suit has been filed in this Honorable Court, concerning the 45 Constituencies the Electoral Commission *seeks to create*.

4 That I intend to contest as a Parliamentary in the Ablekuma West Constituency which is one of the yet to be created Constituencies.

5 That I am a registered voter in Ghana and a Ghanaian citizen who intends to present my humble view and beliefs on the subject matter in dispute in the substantive case and on the Application for injunction brought by the Plaintiff if this application is granted by this honorable court.

6 That I am a relevant intervener whose presence will ensure that all matters in dispute in this proceeding will be effectually and completely determined and adjudicated upon once and for all.

7 That this application is made in the interest of justice and to avoid multiplicity of suits.

8 That I seek to protect my interest in standing for elections as a Parliamentary candidate in one of the 45 Constituencies due to be created by the Electoral Commission and seek to fight the matter *without let or favor as a defendant or interested party if* the application is granted.

That I am told by Counsel and verily believe same to be true that if a matter affects me and do not join the matter I may be bound by the outcome of the matter or suit.
10 That I am told by Counsel and verily believe same to be true that I must hold myself in readiness *if* Parliament passes the relevant Constitutional instrument finalizing the creation of the 45 Constituencies, but the plaintiff respondent in the present suit seeks to terminate the creation process.
11 That I am told by Counsel and verily believe same to be true that if I bring a separate action common questions of law or fact would arise in the present suit and my separate suit.
12 That I am told by Counsel and verily believe same to be true that the reliefs I intend to seek are in respect of or arise out of the same transaction or series or series of transactions in this present suit, *inter alia*, the propriety of the action of the electoral commission , creating additional constituencies in Ghana.
13 that I therefore seek to join this matter as an interested party or defendant as the court deems fit."

The application was stoutly opposed by the respondent, the plaintiff in the substantive suit. I reproduce the salient paragraphs of his affidavit in opposition hereunder:
"5 That I am advised by Counsel and verily believe same to be true that Applicant is not a necessary party to this action
6 That I am advised by Counsel and verily believe same to be true that the nature of this action does not lend itself to the application (sic) being made to join the action."

As stated above, the court has the discretion to grant or refuse the application to join the suit either as an interested party or defendant as the court pleases. But it is settled that the exercise of this discretion is predicated upon well defined principles and a consideration of all the circumstances surrounding the particular application. Another consideration is the best interest of justice.

One other circumstance worthy of consideration is the stark fact that the Ablekuma West Constituency is only one of the constituencies proposed, or intended to be created under C.I. 78. It is yet to be created; at best the

process for its creation is in progress in Parliament. In connection herewith, Article 11 (7) of the 1992 Constitution is relevant. It reads:
"(7) Any orders, Rules or Regulations made by a person or authority under a power conferred by this Constitution or any other law shall,
(a) be laid before Parliament;
(b) be published in the Gazette on the day it is laid before Parliament; and
(c) come into force at the expiration of the twenty-one sitting days after being so laid *unless* Parliament, before the expiration of the twenty-one sitting days, annuls the Orders Rules or Regulations by the votes of not less than two-thirds of all the members of Parliament."

It is within the power of Parliament to approve or annul the instrument laid before it. If it is approved it becomes law and the proposed constituencies will come into being. Of course if on the other hand the instrument is annulled it will not.

By his own deposition in paragraph 10 of his affidavit in support of his application the applicant deposed that the plaintiff in the substantive suit is making efforts to terminate the creation process by instituting the action in suit number J1/19/2012. He has been resisted by the Electoral Commission and the Attorney-General, who has been named specifically as a defendant in the writ. Both have filed their defence to the plaintiff's action and also their memorandum of agreed issues. Both have also filed their statements of case and from their pleadings and processes filed, the issue is, is there still the need for the presence of any other party to settle any issue in dispute? If the applicant feels he has not been catered for or covered in so far as his concerns and interests are concerned and he mounted his own action besides the present one, can't he proceed to have that consolidated with the substantive? Can't he have the present action treated as a test action to cater for all the other persons with similar aspirations when CI 78 is passed into law? If this application succeeds will all persons with similar aspirations placed in similar circumstances, that not open the sluice/flood gates for a myriad of suits to inundate this court? Will it be just and convenient to grant the application then?

At present the stage is set for the legal battle to test the constitutionality of the law in C.I.78 set for 4th October 2012. As at today, C.I. 78 having not become law, I doubt if any legal rights can flow from it. Ablekuma West

Constituency has not been created as yet. This the applicant knows truly well.
His submissions are predicated upon a possibility of an event of the constituency being created and I wonder what the situation will be if Parliament for reasons best known to it, decides to annul the instrument?

The applicant's intentions to stand for elections to Parliament have not yet matured; they may fade into oblivion, forgotten, abandoned completely or postponed for a hope which never materialized, or turned awry.

The applicant cited authorities to support his application, like Tsatsu Tsikata v Republic [2007-2008] SCGLR ; Luke Mensah v A-G [2003-2004] SCGLR 128, Dzaba III v Tumfour [1978] GLR 18; Dwinfour v Boateng [1979] GLR 368, CA; Ekwam v Pianim [1996-97] SCGLR 117 at 118. Counsel for the respondent submitted none of them applied in this application, (because of their subject matters and true nature) they were not decided upon applications for joinder of parties to pending proceedings. Well may that be but what if they stated principles very relevant to the issues at stake in this application for the joinder of parties to an action in court?
Ekwam v Pianim (No. 1) (supra), for example, was an application for interim injunction to restrain a political party, a non party to the substantive suit, as an interested party, likely to be affected. This Court (coram: Kpegah JSC) ordered the party to be served as an interested party which would directly be affected by the orders of the court. His Lordship said the most important argument was whether the court can properly grant an order restraining a non-party to a suit and answered that the question could best be answered by rule 60 of the then Supreme Court rules, 1970, C. I. 13, on which he relied to order NPP to be served as an interested party likely to be affected. His Lordship was of the opinion that '…it is the duty of this court to keep the door to the shrine of justice wide open rather, that to close it." I make no comments on that statement. I only state it that it is one of the principles on which the administration of justice hangs in this court.
Ekwam v Pianim (No. 1) supra must be distinguished from this application on the facts and circumstances. The best that can be said is that that case is not relevant to this application.

I do not think any of the cases cited by the applicant fared any better and are held inapposite to this case.

Another point worthy of consideration is the likely effect on the hearing of the substantive suit if the application is granted. The respondent submitted in that event, rules 46 – 50 of C.I. 16 would have to be complied with before the hearing and this would entail a delay in the hearing. I do not think justice can ever be sacrificed on the altar of expediency, but the true consideration is that in the temple of justice, proceedings ought to be conducted in a manner
that will 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 of such matters, avoided.

Paragraph 8 of the applicant's affidavit in support quoted above reveals the real purpose for which he brought the application. I need not repeat it here. In brief it is so that he can fight the legal battle "without let or favor as a defendant or interested party" whatever that means. Is he suggesting he can 'fight' better than the present defendants, the Electoral Commission or the Attorney-General with their legal armoury?

In conclusion do I state that after considering the motion paper, affidavits in support of and in opposition to the application, the statements of case of the respective parties and their oral submissions in court, I am satisfied that the applicant did not succeed in demonstrating that his presence is necessary, or that he is a necessary party in the matter as one likely to be affected by the results. The phrase is not as open ended as he thinks it is; he cannot come to court and recite the phrase as a open sesame or a legal abracadabra to be joined as a party. It will muddy the waters.

I exercise the discretion I have in dismissing the **application**.
I however rather grant him the liberty of appearing in court with an amicus brief. Towards this end I direct that all processes filed so far in substantive case are to be served on the applicant forthwith.

,

[SGD] J. ANSAH

JUSTICE OF THE SUPREME COURT

COUNSEL;

DAVID ANNAN FOR THE APPLICANT

SAMUEL ATTA-AKYEA, LED BY HON. NANA JOE GHARTEY WITH HIM MRS. EFUA GHARTEY , OSEI-OWUSU FOR THE PLAINTIFF/RESPONDENT.

JAMES QUASHIE-IDUN WITH HIM ANTHONY DABI FOR THE 1ST DEFENDANT/RESPONDENT.

HON. BENJAMIN KUMBOUR (ATTORNEY GENERAL) WITH HIM MRS.MBROKOH EWOAL (SSA) FOR THE 2ND DEFENDANT/RESPONDENT