IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT
ACCRA

CORAM: **DATE-BAH, JSC (PRESIDING)**
ANSAH, JSC
ADINYIRA(MRS.)
OWUSU (MS) JSC
DOTSE, JSC
YEBOAH, JSC
BONNIE, JSC
GBADEGBE, JSC
A BAMFO (MRS), JSC

WRIT NO J1/2/2010
23RD MAY, 2012

SUMAILA BIELBIEL

VRS.

1. ADAMU DARAMANI

2. THE ATTORNEY GENERAL

R U L I N G

DR. DATE-BAH JSC:

It is the unanimous view of the Court that the first defendant should be called upon to open his defence in the interest of justice. This case does not have the ordinary characteristics of a trial say at the High Court. The procedure before this Court is such that, before the commencement of oral testimony in this case, the first defendant had already put matters in evidence by affidavit. In this circumstance, it is artificial, and hardly sustainable, to disregard the evidence

already adduced by the affidavit of the first defendant and proceed to an assessment of a no case submission made on his behalf, as if the only evidence on record is that of the plaintiff.

In this regard, we have sympathy with the following view expressed by Lord Justice Mance of the English Court of Appeal which is quoted with approval by Lord Justice Simon Brown in *Benham v Kythira Investments*_ [2003] EWCA Civ 1794 at para 14, in relation to English practice:

> "In *Boyce -v- Wyatt Engineering* [2001] EWCA Civ 692, a personal injury case brought against three defendants, the judge below allowed a submission of no case to answer made by all three defendants without putting any of them to their election. This court allowed the claimant's appeal (brought solely against the second and third defendants) and in the result remitted the case for retrial before a different judge. Mance LJ gave the leading judgment in this court:
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> > "4. The course taken by the judge of deciding the case following the hearing of the claimant's evidence without putting the defendants to their election is one which calls, on any view, for considerable caution. I mention two particular considerations. First, where a defendant is put to his election, that is the end of the matter as regards evidence. The judge will not hear any further evidence which might give cause to reconsider findings made on the basis of the claimant's case alone. The case either fails or succeeds, even on appeal. But, where no such election is called for, the judge is required to make up his mind as to facts on the basis of one side's case, and then, if he is against the defendant, to hear further evidence and to retain and apply an open mind in relation to all the facts at the end of the trial. That is an inherently difficult exercise. Hence the difference in normal practice between criminal cases (where submissions of no case are common but are determined by a different test and by the judge rather than the jury) and civil cases (where the practice has been for the judge to put the defendant to his election).
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> > 5. In this respect, despite the objectives of the new Civil Procedure Code and the broad powers of court management which it contains,

> there remains force, in my view, in the general observation made in this Court in *Alexander -v- Rayson* [1936] 1 KB 169 at 178 that it is not right that the judge of fact should be asked to express any opinion upon the evidence until the evidence is completed. There may be some cases, probably rare, in which nothing in the defendant's evidence could affect the view taken about the claimant's evidence or case, but this is not one of them, and care would be required in identifying them."

Similarly, it is an inherently difficult exercise to ask this Court in this case to disregard evidence put in play by the first defendant's affidavit and to rule on his submission of no case as if the only evidence on record is that of the plaintiff. That is why we consider that the interests of justice would be best served by hearing whatever evidence the first defendant wishes to offer in his defence. This Court can then make up its mind in relation to all the facts at the end of the trial. We are particularly of this view since we did not put the first defendant to an election before his submission of no case. In reaching this decision, we have taken account of the sound advice of Simon Brown LJ in the *Benham* case cited above where he says (at para 32) :

> "Let me state my central conclusion as emphatically as I can. Rarely, if ever, should a judge trying a civil action without a jury entertain a submission of no case to answer. That clearly was this court's conclusion in *Alexander -v- Rayson* and I see no reason to take a different view today, the CPR notwithstanding. Almost without exception the dangers and difficulties involved will outweigh any supposed advantages. Just conceivably, as Mance LJ suggested at the end of paragraph 12 of his judgment in *Miller* (see paragraph 21), "some flaw of fact or law may … have emerged for the first time, of such a nature as to make it entirely obvious that the claimant's case must fail, and it may save significant costs if a determination is made at that stage". Plainly, however, that was not the case here and hardly ever will it be so. Any temptation to entertain a submission should almost invariably be resisted".

Accordingly, the first defendant is invited to open his defence.

[SGD] DR. S. K. DATE-BAH
JUSTICE OF THE SUPREME COURT

[SGD] J. ANSAH
JUSTICE OF THE SUPREME COURT

[SGD] S. O. A. ADINYIRA (MRS.)
JUSTICE OF THE SUPREME COURT

[SGD] R. C. OWUSU (MS.)
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[SGD] J. V. M. DOTSE
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[SGD] ANIN YEBOAH
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JUSTICE OF THE SUPREME COURT

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COUNSEL:

PLAINTIFF APPEARS IN PERSON
YONI KULENDI (WITH HIM EGBERT FAIBILLE JNR. AND JOSEPH BENARD ASHALLEY) FOR THE 1ST DEFENDANT
SYLVESTER WILLIAMS (PRINCIPAL STATE ATTORNEY) FOR THE 2ND DEFENDANT.