

IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT
OF JUSTICE, GENERAL JURISDICTION 1, HELD IN ACCRA ON
WEDNESDAY THE 14TH DAY OF OCTOBER, 2026 BEFORE HIS LORDSHIP
JUSTICE KWASI ADJENIM-BOATENG

TIME: 9:07AM

SUIT NO: GJ/1029/2026

OSAHEN ALEXANDER AFENYO-MARKING

... PLAINTIFF

VRS.

1. SAMUEL ADU GYAMFI
2. MULTIMEDIA GROUP LTD

... DEFENDANTS

PARTIES: PLAINTIFF REPRESENTED BY ALBERT QUAINOO
DEFENDANTS ABSENT

LEGAL REPRESENTATION:

PAA KWESI ABADOO WITH DEBORA ASABRE AMEYAW, HELENA BAABA
BOTWE, NANA AKUA ADJEI FOBI AND PEPERTUAL NYARKOA
ABOAGYEFOR THE PLAINTIFF- PRESENT

SETH NYAABA WITH GIDEON ABOTSI, HARRIET AKROFI, KELVIN
TAMAKLO, JEFFERY GANDAA AND PRINCE WOLARNYO NORTSU FOR
THE 1ST DEFENDANT/APPLICANT - PRESENT

NO LEGAL REPRESENTATION FOR THE 2ND DEFENDANT

BY COURT: RULING WRITTEN AND READ IN OPEN COURT

This is a ruling in respect of a motion on notice filed on 31st August 2026 praying the court
for an order:

- i. To set aside the Plaintiff/Respondent's Writ of Summons and accompanying Statement of Claim for being incurably defective and incompetent.
 - ii. Dismissing the action in limine;
- upon the grounds of the supporting affidavit

The basis or background to this application is that, aggrieved by a purported publication of defamatory material against the Plaintiff herein, Osahen Alexander Afenyo-Markin, the Plaintiff caused the instant Writ of Summons and Statement of Claim to be issued against the Defendants herein, including the 1st Defendant herein, Samuel Adu Gyamfi, for the reliefs endorsed on the Writ of Summons and Statement of Claim reproduced below as follows:

- a) General damages for libel.
- b) Aggravated damages
- c) Exemplary damages
- d) An order directing the Defendants to publish a full, unconditional and unequivocal retraction of the defamatory statements.
- e) An order directing the Defendants to publish a full, unconditional and unequivocal public apology to the Plaintiff.
- f) An order directing that the retraction and apology be published and/or broadcast with substantially the same prominence and reach as the original publication

- g) An order directing the Defendants to cause the retraction and apology to be broadcast on JoyNews and published on the relevant electronic and social-media platforms through which the defamatory publication was disseminated
- h) An order of perpetual injunction restraining the Defendants, their servants, agents, assigns and/or any persons acting under their authority from further publishing the defamatory words or any words to the same or substantially similar effect concerning the Plaintiff
- i) Costs of Fifteen Million Ghana Cedis (GH¢15,000,000.00) as compensation thereof
- j) Cost, including legal costs; and
- k) Any further or other reliefs as this Honorable Court may deem fit.

Upon service of the said Writ of Summons and Statement of Claim on the Defendants, the 1st Defendant on the 31st of August 2026 entered a conditional appearance to the Plaintiff's action. In the said conditional appearance, the 1st Defendant gave his name as Samuel Gyamfi and not Samuel Adu Gyamfi. But be it as it may, at least, the 1st Defendant has been identified and served with the Writ of Summons and Statement of Claim in respect of which, as indicated above, the 1st Defendant has entered appearance, albeit conditional.

After the said conditional appearance and on the same 31st August 2026, the 1st Defendant filed the instant motion for the reliefs stated supra. It is the case of the 1st Defendant that a precondition under the rules of the court that before a Writ is issued in an action for libel

like the instant matter, the particulars of the purported defamatory statement are mandatorily required to be endorsed on the Writ.

According to the Applicant, the failure by the Respondent to endorse the particulars of the purported defamatory statement on the Writ renders same incurably defective and incompetent and therefore this court's jurisdiction has not been properly invoked by the Respondent for the remedy that the Respondent seeks.

The Applicant contends that where the rules of court prescribe a particular mode of seeking relief and a party fails to initiate the proceeding for relief in accordance with the prescribed mode, it is a matter that goes to the jurisdiction of the court and therefore by the failure to endorse the particulars of the purported defamatory statement on the Writ before issuing same contrary to the rules of the court is not just an irregularity but one that goes to the jurisdiction of the court.

As expected, the Plaintiff is vehemently opposed to the instant motion and has in consequence filed an affidavit in opposition on 15th September 2026. The gravamen of the opposition, among others, is that the Plaintiff's Writ of Summons filed on 24th August 2026 is not in any way impugned by law or rules of procedure of the court, given the fact that under Order 82 Rule 3 of C.I. 47, the rules of court specifically define or interpret a Writ of Summons and endorsement thereon to include its accompanying Statement of Claim. In other words, the Writ of Summons and Statement of Claim complement each other and must be read conjointly and not disjointly to arrive at the object of the process; otherwise,

an isolated literal reading of *Order 57 Rule 2 of C.I. 47* could lead to mischief, as the instant Applicant seeks to do in the instant case.

It is a further case of the Respondent that sufficient particulars of the publication of the defamatory statement made by the Applicant have been specifically stated with certainty in paragraphs 11, 12, 13, 22 and 23 of the Plaintiff's Statement of Claim filed with the Writ of Summons on the said 24th August 2026 and same complements the endorsement on the Plaintiff's Writ of Summons.

In the circumstances, according to the Plaintiff, any isolated literal reading of Order 57 Rule 2 of C.I. 47 without considering the true, pure and contextual meaning of what constitutes a Writ as provided in the interpretative section of C.I. 47 as per Order 82 Rule 3 makes the Writ of Summons, including the endorsement thereon, a separate document from the Statement of Claim contrary to the intendment of C.I. 47 and the Applicant's instant motion plunges squarely into this unsafe ground.

The Plaintiff further contends that the Apex Court has pronounced time and again on this same subject that a Statement of Claim cures any defect in the Writ of Summons.

After the Applicant's motion filed on the said 31st August 2026, the Plaintiff has on the 1st of September 2026 filed an Amended Writ of Summons and Amended Statement of Claim for the reliefs endorsed thereon, including:

- (a) A declaration that the description and references of the Plaintiff as an “extortionist” by the 1st Defendant NewsFile Broadcast by the 2nd and 3rd Defendants on Saturday 22nd August 2026 is defamatory and that the publication was actuated by malice aimed at tarnishing the reputation of the Plaintiff.

With respect, the law as I understand it is that an amendment cannot be used to defeat the purpose of an objection taken in respect of a pending process before the court. On this, see Ahinakwah II & Anor vrs Okaidja III & Ors [2010-12] 2GLR at page 452 @ 462 also reported in 2010 31 MLRG 92 @ 99 and holding 4, where it was stated thus:

“It is trite that an amendment cannot be granted or sought for the purpose of defeating an objection to a process that is pending before the court...”

From the above statement of the law (authority), I do not intend to take into consideration the said amended process as far as this ruling on the objection taken with respect to the competence of the Plaintiff's libel action is concerned. Therefore, I will leave it at that.

Order 57 Rule 2 under which the Applicant has mounted his application reads as follows;

“Rule 2 on Endorsement of Claim in Libel Action: Before a Writ is issued in an action for Libel, it shall be endorsed with a statement giving sufficient particulars of the publication in respect of which the action is brought to enable them to be identified”.

During their submissions to the court, counsel for the disputing parties have cited a lot of authorities and have urged the court to accept their respective positions, which authorities I have had the privilege of reading beforehand.

In the case of *Owusu Domena vrs Amoah [2015-2016] 1 SCGR page 790 @ 795-796*, a case in respect of which learned counsel for the parties have given their opinions thereon to the court, but for the avoidance of doubt, I wish to quote a portion from the report itself so that the dispute as to what the judgment said shall be brought to rest. At page 795 of the *Owusu Domena* case supra, this is what the Supreme Court said;

“The reliefs endorsed by Plaintiff on the Writ raised no claim known in tort. Though the category of tort is not closed, yet malice or recklessness is not a tortious liability per se; it must be pleaded in relation to a specific tort. Thus, the Plaintiff is required to give the particulars of the libelous publication complained of in the indorsement to the Writ as required by Order 57 Rule 2 of the High Court Civil Procedure (Rules) 2004, C.I. 47. And if he desires to do so in the Statement of Claim, he must seek to amend the indorsement on the Writ. The Plaintiff did not comply with this provision in C.I.4;7 and yet the Defendant did not raise any objection in the proceedings. However, Order 81 of C.I. 47 has taken care of such non-compliance, especially where the Defendant did not complain and participated fully in the proceedings. Therefore, the particulars of the publication which were detailed in the Statement of Claim would be deemed to have cured the defect in the endorsement”.

The question begging to be answered is this: **“Are the facts as contained in the Owusu Domena’s case on all fours with the instant case?”**

The Applicant says no; the Plaintiff says yes. With respect, I am unable to agree with the position taken by the learned counsel for the Plaintiff. This is because the Applicant, right at the outset of the case, the Applicant entered a conditional appearance and immediately followed it up with the instant motion.

My disagreement with the learned counsel for the Plaintiff that the particulars in the Statement of Claim has necessarily rectified the non-compliance is fortified by my view that specific legal remedies require the application of specific rules of court and these are given statutory support. For example: *Order 57 on defamation, Order 58 on Commercial Claims, Order 59 on Money Lenders’ and Mortgage Actions, Order 60 on Insolvency Proceedings, Order 61 on Debenture Holder’s action, Order 62 on Maritime Action etc.*

All these special reliefs as indicated supra require their special applications of the rules to properly invoke the jurisdiction of the court. This means that general provisions of the rules are sometimes inappropriate for application to specific remedies, as in the instant case, which is an action in defamation.

My position on this matter is further supported by a recent decision of the Supreme Court in the consolidated cases of **Alex Onumah Coleman & Anor vrs Newmont Ghana Gold,**

Emmanuel Atsiafu & Ors vrs Newmont Ghana Gold, and Isaac Kongetey & Anor v.

Newmont Ghana Gold ([2021] 171 GMJ 261 @ 277 and holding 290, where the Supreme Court held as follows;

“...Obviously it was on that erroneous ratio that the trial court went ahead to award damages for defamation. Of course the Court of Appeal did rightly dismiss the holding, and this court agrees fully with the conclusion reached by the first appellate Court below since they are supported by the evidence on record. Notably, Order 57 Rule 2 and 3 (1) of the High Court (Civil Procedure) Rules [2004] C.I. 47 provide that:

“2. Before a Writ is issued in an action for libel, it shall be endorsed with a statement giving sufficient particulars of the publication in respect of which the action is brought to enable them to be identified.

3(1) Where in an action for libel or slander the Plaintiff alleges that the words or matters complained of have been used in a defamatory sense other than their ordinary meaning, he shall give particulars of the facts and matters on which he relies in support of the sense alleged.

Indeed, a Writ in a libel claim must contain endorsement giving sufficient particulars of the publication in respect of which the action is brought to enable them to be identified. *Order 57 Rule 2* stated supra is apt on this note. Moreover, where words or matters complained of have been used in a defamatory sense other than

their ordinary meaning, particulars of the facts on which a Plaintiff relies in support of the case must be pleaded. *Order 57 Rule 3 (1)* stated supra is equally supportive.

In conclusion, and relying on the authorities cited supra, I agree with the Applicant that not endorsing the particulars of the purported defamatory publication in the Writ of Summons makes the entire action incurably defective and incompetent. Accordingly, the Plaintiff's Writ of Summons and Statement of Claim filed on 24th August 2026 are hereby set aside for the reasons stated supra.

COUNSEL FOR 1ST DEFENDANT/APPLICANT: My Lord, we pray for costs of GH¢20,000.00

COUNSEL FOR PLAINTIFF: My Lord, we pray that costs be waived at this point.

COUNSEL FOR THE 1ST DEFENDANT/APPLICANT: My Lord, as the court pleases.

BY COURT: In view of the submissions by counsel for the parties, there shall be no order as to costs.

SGD.

H/L JUSTICE KWASI ADJENIM-BOATENG
JUSTICE OF THE HIGH COURT

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16/11/20
HIGH COURT
GENERAL JURISDICTION, LCC-ACCRA