

IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH
COURT OF JUSTICE (GENERAL JURISDICTION DIVISION)
SITTING IN ACCRA, ON WEDNESDAY THE 22ND DAY OF JUNE,
2022

SUIT NO: GJ/1053/2016

HENRIETTA ASABEA AMPONSAH

PLAINTIFF

VERSUS

1. THE ATTORNEY GENERAL ----
2. THE REGISTRAR, CIRCUIT COURT
TEMA --
3. EMCO VENTURES ----

1ST DEFENDANT

2ND DEFENDANT

3RD DEFENDANT

PARTIES:

Plaintiff - Present

1st and 2nd Defendants – Absent

3rd Defendant – Represented by Mr. Emmanuel Badu Martey - Present

COUNSEL:

Ms. Belinda PWAMANG for the Plaintiff - PRESENT

Yvonne A. AWOONOR-WILLIAMS for the 1st & 2nd Defendants –
PRESENT

Celestine Aku YANNEY for the 3rd Defendant - PRESENT

JUDGMENT

Kweku T. Ackaah-Boafo, J

i. Introduction:

[1] The decision of the Circuit Court, Tema made in December 2013 is the subject matter of this suit. Further to an application for the release of a Toyota Camry and a Toyota Corolla which

were impounded by the Ghana Police Service further to an arrest of certain individuals, including one Antoinette Gbedzo, the Court after reviewing the evidence and analysing same refused the application and stated "*I refuse his application and I order the two vehicles, Toyota Corolla GC 6976-12 and Toyota Camry GB 6615-12 in the possession of the police to be kept in the court premises with keys kept by the Registrar*". By that ruling the Court ordered that the Toyota Camry vehicle which was in the possession of the said Antoinette Gbedzo, who was arrested by the police, be preserved until the determination of the case. The Plaintiff who is the owner of the Toyota Camry vehicle has in this suit sued the Attorney-General, the Registrar of the Circuit Court and the 3rd Defendant, which is a car rental company and seeks a declaratory order and recovery of possession of the vehicle and other judicial reliefs endorsed on the writ of summons against the Defendants.

ii. The Action:

[2] By an Amended Writ of Summons issued at the Registry of this Court together with a statement of claim on April 13, 2017, the Plaintiff claims against the Defendants the following judicial reliefs:

- a. Declaration of title to the Toyota Camry described in the schedule hereto.
- b. Recovery of Possession of the car.
- c. Cost of repairing the car estimated at GH¢157,792.25 or alternatively the market value of the car estimated at GH¢50,000.00.
- d. Specific damages for loss of expected earnings of GH¢68,400.00.
- e. Interest on GH¢68,400.00 from the date of filing this writ to the date of final judgment.
- f. Damages for unlawful detention of car.
- g. Legal Cost.

SCHEDULE

GREY TOYOTA CAMRY WITH REGISTRATION NO. GB 6615-12 CHASSIS NO. 4T1BF3EK8AU564908, MANUFACTURED IN 2010.

[3] After the service of the writ and its accompanying statement of claim on the Defendants, a Notice of Entry of Appearance was entered on behalf of the 1st and 2nd Defendants by the Office of the Attorney-General and a joint statement of defence was filed on June 28, 2017. Doegah-

Yanney Law Consult, Barristers & Solicitors entered appearance for the 3rd Defendant and filed a statement of defence for it on November 3, 2017.

iii. The Background:

Plaintiff's Case:

[4] In the 22-paragraph Amended Statement of Claim, the Plaintiff pleaded that she is the owner of Toyota Camry with registration number GB 6615-12. The Plaintiff described the 1st Defendant as the statutory legal representative for the state in all matters and the 2nd Defendant is the Registrar of the Tema Circuit Court. The 3rd Defendant was also described as an operator of car sales and rentals at Tema. The Plaintiff further pleaded that she purchased the vehicle, the subject matter of the litigation, from one Richard Ntiamoah sometime in May, 2013. According to the Plaintiff, whilst the processes for the change of ownership from the said Richard Ntiamoah to her name, she entered into an agreement with 3rd Defendant on June 1, 2013 for the rental of the vehicle. The further pleading of the Plaintiff was that the transfer of the vehicle from Mr. Ntiamoah to her was completed on 24th October, 2013 by the Driver and Vehicle Licensing Authority (DVLA).

[5] It was further pleaded that the Plaintiff agreed with the 3rd Defendant that she would be paid GH¢1,800.00 every month subject to some conditions in the agreement. According to the Plaintiff, further to the agreement on August 10, 2013, the 3rd Defendant rented the vehicle to one Antoinette Gbedzo for two days and while the vehicle was in the possession of the said Antoinette, she was arrested by the police and charged with the offence of conspiracy to steal and abetment together with one Ernest Osei and Samuel Tokoli on 12th November, 2013. The further pleading of the Plaintiff was that "upon an application for the release of the car and a cross-application for the restriction on the properties of the accused persons" the Circuit Court Tema on December 13, 2013 ordered that the vehicle be detained and preserved at the Court premises with the keys to be kept by the Registrar.

[6] The Plaintiff further pleaded that "till date the car is still parked at the court registry and has been exposed to the harsh conditions of the weather. The car has deteriorated beyond recognition and trial in the criminal matter is yet to commence". The further pleading of the

Plaintiff was that the car would not be released to her unless ordered by the Court. According to the Plaintiff "if the car had not been unlawfully detained, the Plaintiff would have earned GH¢1,800.00 per month from November, 2013 to date". The Plaintiff provided the particulars of the loss of her expected earnings from November 2013 to about December 2016 to be GH¢68,400.00.

[7] The Plaintiff also pleaded that further to an application filed at this Court in Accra, the vehicle was ordered released by an order dated December 15, 2016. According to the Plaintiff when the car was released it had deteriorated to the extent that most of the parts had to be replaced. It was also averred that the car had to be towed to a mechanic for repairs because "the car was not in a motorable condition" as most of the parts were spoilt. It was further pleaded that "the mechanic on the instructions of the Plaintiff requested for an estimated cost of those parts from Toyota Ghana Company Ltd and the estimated cost of the parts for fixing the car was GH¢157,792.25.00". Based on all of the above, the Plaintiff claims against the Defendants per the reliefs endorsed on the writ of summons.

Defendants' Case:

[8] As indicated above, the 1st and 2nd Defendants filed a joint defence. In their 12 paragraphed Joint Statement of Defence, the Defendants vehemently denied the case of the Plaintiff. It was pleaded that the Toyota Camry with registration number GB 6615-12 was detained under a Preservation Order of the Circuit Court, Tema for further investigations and the car was in the possession of the police.

[9] The 1st and 2nd Defendants denied the averments of the Plaintiff and pleaded among others that it would put the Plaintiff to strict proof of her claims. It was pleaded that the 1st and 2nd Defendants were not in the position to admit or deny certain averments of the Plaintiff. It was also pleaded that by a ruling delivered by this Court on December 15, 2016 the vehicle was ordered to be released to the Plaintiff. Consequently, the 1st and 2nd Defendants pleaded that they are not liable to the Plaintiff and therefore the Plaintiff's case should be dismissed.

[10] The 3rd defendant in its statement of defence filed also principally denied the Plaintiff's claims and prayed that same be dismissed. The 3rd Defendant like the 1st and 2nd Defendants also pleaded that it was not in the position "to admit or deny paragraphs 1-8 and paragraphs, 9, 10, 11 and 12 of the Plaintiffs Statement of Claim". The 3rd Defendant confirmed that it had a contract with the Plaintiff to rent out her car for a fee of GH¢1,800.00 per month and it performed its part of the bargain. In response to paragraphs 11 and 12 of the Statement of Claim, the 3rd Defendant averred that as part of the contract with the Plaintiff, it rented the vehicle to one Antoinette for two (2) days but she failed to return the vehicle at the end of the rental period and when an enquiry was made from her guarantors as to her whereabouts, it was revealed that she had been arrested by the police and the vehicle impounded.

[11] The 3rd Defendant further averred that it made several attempts to the police and explained the circumstances under which Antoinette had possession of the vehicle, and the fact that the vehicle did not belong to Antoinette but to no avail. It was also further averred that the Plaintiff was immediately informed about the situation and several other attempts were made to the police to release the vehicle but the vehicle was not released. According to the 3rd Defendant, when the matter was sent to the Circuit Court, Tema, by the Police, a further attempt was made to have the vehicle released to the Plaintiff by employing the service of a lawyer who filed an application with attached documents including the rental agreement for the release of the vehicle but the application was refused by the court. It was further pleaded that the lawyer retained further applied to the High Court in Tema for the release of the vehicle but again the application was refused.

[12] It was also averred that the 3rd Defendant was not in a position to admit or deny paragraph 13 of the Statement of Claim. According to the 3rd Defendant, when the instant writ of summons was issued, it was informed by the Plaintiff that it was only included in the suit "as a party only for sake of formality and that, the Plaintiff has no action against the 3rd Defendant". According to the 3rd Defendant it has incurred a lot of costs in attempting to retrieve the vehicle for the Plaintiff even though it was not obliged to do so, and therefore it could not be blamed for the seizure of the vehicle because what it did was "out of a goodwill and for humanitarian reasons". The 3rd Defendant also pleaded that the Plaintiff was aware of the attendant risks and consequences

involved in renting her car to strangers and she agreed to it and therefore the 3rd Defendant pleaded that it has no liability in the matter to the Plaintiff over the seizure of the vehicle.

iv. The Issues for Determination:

[13] At the close of the pleadings, the Plaintiff's Counsel formulated about seven issues many of which are not germane and relevant. The issues formulated included:

1. Whether or not the Plaintiff is the owner of the Toyota Camry described in the schedule of her statement of claim.
2. Whether or not the Plaintiff is entitled to recover the amount of GH¢157,792.25 as the cost of repairing the car.
3. Whether or not the car was lawfully detained.
4. Whether or not the issue of ownership of the Toyota Camry vehicle with registration Number GB 6615-12 has been established by the Circuit Court or any other court of Competent jurisdiction.
5. Any other issues that arise on the face of the pleadings.

[14] After the mandatory pre-trial conference the matter was set down for trial. At the trial, the Plaintiff testified herself and called one other witness by name Enoch Twum, the mechanic who serviced the vehicle and thereafter closed her case. The 1st and 2nd Defendants called Madam Mary Haizel, the Registrar of the Circuit Court, Tema as their witness while Mr. Emmanuel Nortey Larbi testified as the witness for the 3rd Defendant at trial.

v. The Evidence Received by Court:

[15] The Plaintiff's evidence in terms of the statement of claim and the witness statement filed were not different. Madam Henrietta Asabea Amponsah testified that she purchased the vehicle from one Richard Ntiamoah sometime in May 2013 and therefore she is the owner of the Toyota Camry with registration number GB 6615-12. A copy of the receipt issued to her was tendered as **Exhibit "A"**. The Plaintiff further testified that after the payment, the vehicle was handed over to her and Mr. Ntiamoah by letter dated October 21, 2013 duly notified the DVLA of the transaction and requested that the records at the DVLA be amended. A copy of the said letter was tendered as **"Exhibit B"**.

[16] Madam Asabea Amponsah further told the Court that she entered into an agreement on June 1, 2013 with the 3rd Defendant for the vehicle to be rented out upon certain terms. According to her, it was agreed that she would be paid GH¢1,800.00 every month for the rental of her vehicle. A copy of the agreement was tendered as **Exhibit "C"**. The Plaintiff further testified that at the time of the agreement the ownership process had not been completed at the DVLA but it was later completed. She tendered as **Exhibits "D" and "E"** being the change of ownership documents presented to the DVLA and a search conducted at the DVLA.

[17] The further evidence of the Plaintiff was that "on 10th August 2013, the 3rd Defendant rented my car to one Antoinette Gbedzo for two days. The said Antionette was arrested by the police with the Toyota Camry and charged together with one Ernest Osei and Samuel Tokoli on 12th November, 2013 with the offence of conspiracy and stealing and abetment respectively". The witness further testified that on 13th December, 2013 the Court ordered that the car "which was in the possession of the police to be kept at the Court premises with the keys to be kept by the Registrar". She confirmed that the ruling was as a result of an application by the manager of the 3rd Defendant Company for the release of the car. A copy of the Court's ruling was tendered as **Exhibit F**. The Plaintiff further said "My car was then parked outside the Registry of the Circuit Court exposed to the harsh conditions of the weather. My car deteriorated so much that the whole body and tyres were damaged as at October, 2016". Photographs of the car as of 2016 when same was released to her were tendered as **Exhibit G Series**.

[18] The Plaintiff further testified that the car was towed to my mechanic who examined it and made a list of all the parts that were broken and needed to be replaced. A copy of the list of parts was tendered as **Exhibit H**. She also further testified that the mechanic later got lower estimates from the market to fix the vehicle. Madam Asabea stated that:

"If my car had not been detained, I would have earned GH¢1,800 per month from November, 2013 to date all things being equal. The money I would have made from November, 2013 to December 2016 would have totaled GH¢68,400.00 per my calculations minus the 2017 and 2018 amounts if I am to add that to the amount. My checks revealed that if I have to purchase my type of car from the market, it will cost an estimated amount of GH¢50,000.00. I have

suffered so much anxiety and inconveniences as result of the detention of my car as far back as 2013. I have also lost a lot of money I would have had access to for my family upkeep". She therefore prayed the Court to grant the reliefs endorsed on the writ of summons.

[19] Madam Asabea was cross-examined by Counsel for the Defendants on May 21, 2021. She confirmed when and from whom she bought the vehicle and also confirmed that at the time she rented the vehicle to the 3rd Defendant the change of ownership had not taken place at the DVLA. She also confirmed that she met Antoinette, the person who rented the vehicle, for the first time in Court. She further confirmed that the vehicle was impounded by the police when Antoinette was arrested. She also confirmed that when the matter went before the Court, the judge ordered that the vehicle be kept and "the car was parked at the Tema Harbour Police Station". The Plaintiff also agreed with Counsel for the 3rd Defendant that she was aware that "the 3rd Defendant rushed to the Police Station with the documents of the vehicle" when the vehicle was seized by the police.

[20] Part of the cross-examination evidence of the Plaintiff when she was cross-examined by the 3rd Defendant's Counsel was revealing and it is as follows:

"Q: So, on all three occasions (1) when the 3rd Defendant tried releasing the vehicle from the Police Station for you (2) its application to the Circuit Court, Tema and (3) its application to the High Court, Tema. Was the vehicle released on any of these occasions?

A: No, my Lord.

Q: Can you tell us why?

A: My Lord I have no idea.

Q: I put it to you that despite all efforts of the 3rd Defendant to assist you to have your vehicle released even though it had no obligations to do so under your rental agreement with it, it was unsuccessful. Is that not so?

A: Yes, my Lord.

Q: I put it to you that, it was the police who refused to release the vehicle initially and secondly, it was the Circuit Court, Tema that further detained your vehicle. Is that not so?

A: Yes, my Lord.

Q: I want to refer you to your paragraph 17, you said in there that "*if the car had not been unlawfully detained, the Plaintiff would have earned GH¢1800.00 per month from November, 2013*". Is that right?

A: Yes, my Lord.

Q: **Did the 3rd Defendant unlawfully detain your vehicle?**

A: **No, my Lord.**

Q: So, is there any paragraph or any indication whatsoever in your statement of claim, witness statements, affidavits, that the 3rd Defendant is liable to you?

A: No, my Lord.

Q: Based on all of the above answers, why have you sued the 3rd Defendant?

A: My Lord, 3rd Defendant is the mediator between me and Antoinette".

[21] The Plaintiff's witness Mr. Enoch Twum testified by confirming that when the vehicle was ordered to be released it was not motorable because many parts of the vehicle were broken and therefore it was towed to his shop. He also confirmed the list he prepared for the Plaintiff. A copy of the list of the parts which according to the witness had to be bought for replacement was tendered as **Exhibit K**. He also confirmed that he repaired the vehicle and he attached as **Exhibit M**, a copy of the invoice he presented to the Plaintiff. He was also cross-examined by Defendants' Counsel and thereafter discharged.

[22] As indicated above, the 1st and 2nd Defendants' evidence was proffered by Madam Mary Haizel, the current Registrar of the Circuit Court, Tema. The pith and substance of her evidence was that the vehicle, the subject matter of the suit was detained under a Preservation Order of the Circuit Court in December 2013 because of a criminal case pending before the court titled **The Republic v. Antoinette Gbedzor & 2 Others** for the embezzlement of money from their employer when they were a cashier and accountant of the complainant in the case.

[23] Madam Haizel testified that the investigation revealed that the 1st Accused (Antoinette) used the stolen money from her employers to buy cars and was operating car hiring services and the Toyota Camry GB 6615-12 was listed as one of the vehicles. She testified that the accused persons were arrested with two Toyota cars being vehicles with registration numbers GB 6615-12

and GC 6976-12 and same were impounded by the Police. According to the witness, the police have had possession of the vehicle since the arrest. She also confirmed that an application was made to the Circuit Court for release of the vehicle, but same was denied by the court and the Judge stated that, "in the event of the vehicles not being acquired with the proceeds of the complainant money, the complainant will be ordered to pay some compensation to the owners if any". She also said, the Judge assured the parties that the trial will be expedited due to the controversy around the ownership of the vehicles.

[24] The further evidence of the witness was that the criminal trial is still pending at the Circuit Court in Tema and therefore the Plaintiff is not entitled to the reliefs endorsed on her Writ and Statement of Claim. She therefore testified that the 1st and 2nd Defendants are not liable to the Plaintiff for the damages she claims because the vehicle was not unlawfully detained. Madam Haizel was also cross-examined and thereafter discharged.

[25] Mr. Emmanuel Nortey Larbi testified for the 3rd Defendant. The witness rehashed the 3rd Defendant's narrative that it entered into an agreement with the Plaintiff for the rental of her Toyota vehicle, the subject matter of the suit. The witness retailed the story of the 3rd Defendant including the efforts made by way of the various applications in the Courts to have the vehicle released to the Plaintiff. Mr. Nortey Larbi tendered the following exhibits:

Exhibit 1 – The Rental Agreement

Exhibit 2 Series – The Motion on Notice filed for the release of the vehicle at the Circuit Court

Exhibit 3 - The Ruling of the Circuit Court

Exhibit 4 Series - The Motion with affidavit and exhibits filed at the High Court, Tema.

[26] The witness further testified that when the vehicle was "impounded it was in excellent condition but that 1st and 2nd Defendants through its agent subjected it to the harsh conditions of the weather and hence it deteriorated". According to the witness "through this act of the 1st and 2nd Defendants' agents, the Plaintiff was not the only person who incurred loses but also the 3rd

Defendant also lost revenue in the form of commission due it. The case of the 3rd Defendant was that the vehicle was not in its possession and it played no part in the seizure of the vehicle and the detention of same. According to the 3rd Defendant's witness, "the 1st and 2nd Defendants are responsible for the damage done to the Plaintiff's vehicle and not the 3rd Defendant who did its possible best to have the vehicle released". To that extent, the 3rd Defendant prayed the Court to dismiss the suit against it.

vi. Determination of the Issues by the Court:

[27] Before proceeding to address the issues in this case, I wish to first deal with a procedural issue with regards to the pleadings. The Plaintiff at **paragraphs 8 to 11** of the Amended Statement of Claim narrated how the agreement was reached with the 3rd Defendant to pay her GH¢1,800.00 every month. She also narrated the steps taken by the previous owner to have the ownership changed at the DVLA into her name and the rental of the vehicle to the said Antoinette Gbedzo.

[26] In answer to the above paragraphs 8 to 11 of the Plaintiff's statement of claim, the 1st and 2nd Defendants in their Joint Statement of Defence stated at paragraph 5 as follows:

"With respect to paragraphs 8, 9, 10 and 11 of the Plaintiff's Amended Statement of Claim, the 1st and 2nd Defendants are not in a position to admit the claims of the Plaintiff".

At paragraph 8 of the joint statement of defence again it was pleaded that;

"The 1st and 2nd Defendants are not in a position to admit or deny Paragraph 15 of the Plaintiff's Amended Statement of Claim.

In the same vein, the 3rd Defendant also at paragraphs 4 and 14 of its statement of defence pleaded that:

"The 3rd Defendant is not in a position to admit or deny paragraphs, 9, 10, 11 and 12 of the statement of claim".

“The 3rd Defendant is not in a position to admit or deny paragraphs 14 – 22 of the statement of claim”.

[27] Based on my understanding of the law, the Court is at a loss as to the meaning of the above Defendants’ averments. This is because the law is certain that a party, who intends to deny an averment in a pleading, must do so specifically and that a pleading to the effect that one could neither admit nor deny an averment is, to state the obvious, no denial. **Order 11 rule 13(3)** of the *High Court (Civil Procedure) Rules, 2004 [C.I. 47]* provides: ***“Subject to rule (4), every allegation of fact made in a statement of claim or counterclaim which the party on whom it is served does not intend to admit shall be specifically traversed by the party in the party’s defence or defence to counterclaim and a general statement of non-admission shall not be a sufficient traverse of them”.***

[28] One of Ghana’s true legal luminaries, the late Enoch D. Kom who is the author of the book ‘Civil Procedure in the High Court’, first published in 1971 by the Ghana Publishing Corporation, confirmed the above legal position succinctly and in plain language at page 49 of the book as follows: - ***“In traversing a fact the defendant must ‘DENY’ or say that ‘DOES NOT ADMIT’ it. Such expressions as ‘the defendant puts the plaintiff to proof’, ‘the defendant is not in a position to admit or deny’ a fact must not be used because they have been held to be insufficient traverse, evasive denial, and not answering the point of substance, Harris v Gamble (1878) 7 Ch. D. 877; Rutter v Tregent (1879) 12 Ch. D. 758”.*** [Emphasis Mine].

See also the unreported Supreme Court case of **EVELYN ASIEDU OFFEI v YAW ASAMOAH & ODEHYE KWAKU GYAPONG Civil Appeal Number No. J4/64/2016 delivered 25th April 2018** by which the Supreme Court reiterated the same principle.

[29] In this case, I am of the view that the Defendants did not specifically deny the Plaintiff’s pleadings referenced above and contained in the statement of claim. In my respectful opinion, the Defendant’s averments highlighted above are improper and unacceptable in law and therefore going forward Counsel should avoid filing such pleadings.

[30] Now, in resolving the dispute among the parties, I am of the opinion that the issues to be determined are both legal and factual. The factual issues are to be determined by credible evidence adduced before the court. However, in the determination of the factual issues, the court applies tests based on legal principles to arrive at a conclusion as to whether or not any of the parties has proved his case to the standard required by law. This is because the law is trite and same supported by statute that for a court to decide a case one way or the other, each party to the suit must adduce evidence on the issues to be determined by the court to the standard prescribed by law.

[31] The above legal position is supported by various provisions of the Evidence Act 1975 (NRCD 323). Section 14 of the Act for instance provides:

“(14). Except as otherwise provided by law, unless and until it is shifted a party has the burden of persuasion as to each fact the existence or non existence of which is essential to the claim or defence he is asserting”.

The burden of producing evidence by both sides in the suit as well as the burden of persuasion is one to be determined on the preponderance of probabilities as defined by Section 12(2) of the Evidence Act 1975 (NRCD 323).

[32] The law on proof is, in civil cases like the instant, quite clearly, stated in sections 10(1), (2)(b), 11(1),(4), 14 and 17 of the Evidence Act, 1975 (NRCD 323). In **OKUDZETO ABLAKWA (NO. 2) v. ATTORNEY GENERAL & ATTORNEY** [2012] 2 SCGLR 845 at 867 the court explained the law governing proof when it stated that:

“If a person goes to court to make an allegation, the onus is on him to lead evidence to prove that allegation, unless the allegation is admitted. If he fails to do that, the ruling on that allegation will go against him. Stated more explicitly, a party cannot win a case in Court if the case is based on an allegation which he fails to prove or establish. This rule is further buttressed by section 17 (b) which, emphasizes on the party on whom lies the duty to start leading evidence...”

[33] It is also trite law that for every case, there is a burden of proof to be discharged and the party who bears the burden will be determined by the nature and circumstances of the case; See Sections 10 – 17 of the Evidence Act, 1975 (NRCD 323). I note that there is no paucity of case law interpreting the provisions of NRCD 323. One of such cases is the Supreme Court case of ABABIO v. AKWASI III [1994-95] GHANA BAR REPORT, VOL 2, 774 where the apex court stated that a party whose pleadings raise an issue essential to the success of the case assumes the burden of proving such issue. Also see in RE ASHALLEY BOTWE LANDS: ADJETEY AGBOSU & ORS v KOTEY & ORS [2003-04] SCGLR 420 which further elucidates the burden of proof as statutorily provided.

[34] In resolving the issues set down, I am of the respectful opinion that based on the evidence heard, I do not think that there is much controversy that the issue whether or not the Plaintiff is the owner of the Toyota Camry described in the schedule of the Plaintiff's statement of claim ought to be resolved in her favour. The evidence shows and the Court accepts as a fact that the Plaintiff purchased the vehicle, the Toyota Camry with registration number GB 6615-12 from a certain Mr. Richard Ntiamoah in May 2013 as per **Exhibit "A"**. Indeed, the Defendants have not contested that fact at all. The Court also finds as a fact that the Plaintiff entered into an agreement on June 1, 2013 for the vehicle to be used as a rental vehicle as per **Exhibit "C"**. Also, as stated by this Court in its ruling dated December 15, 2016 when Exhibit "C" was executed, the Plaintiff was not the legal owner of the vehicle because the change of ownership had not been effected by the DVLA. That notwithstanding, the Court now finds as a fact that as per **Exhibit "E"**, the Plaintiff became the legal owner on October 24, 2013. To that extent, the Plaintiff's ownership of the vehicle is not in dispute at all and the Court so holds.

[35] Having determined the ownership of the vehicle, in the opinion of the Court, the real issue that arises from the pleadings "is whether or not apart from the declaratory reliefs endorsed on the writ of summons the Plaintiff's other reliefs are legally sustainable"? To my mind, the resolution of that issue will determine whether or not the Plaintiff's claims for loss of earnings and damages are justified.

[36] In answering the above question, the Court wishes to put it on record that it has strained itself to understand the reasons behind the issuance of the writ against the Defendants herein by the Plaintiff, as it is not very clear. The Court notes that the Plaintiff in her testimony under cross-examination, at least explained why the 3rd Defendant was added as a party when she said “My Lord, 3rd Defendant is the mediator between me and Antoinette”. By that testimony, the Court understood Madam Asabea Amponsah to say that, because Antoinette rented the vehicle from the 3rd Defendant, in her view the 3rd Defendant is to be held liable for her loss. But, is that enough to make the 3rd Defendant liable based on the agreement signed between them? I do not think so.

[37] Unlike the 3rd Defendant, no reason has been given as to why the Attorney General has been sued? The Plaintiff does not tell the court why the Attorney General is a party to the suit except the pleading at paragraph 2 of the Amended Statement of Claim that “the 1st Defendant is the statutory legal representative for the state in all matters”. The question then is, is this suit against the state? If so, which institution of the state is the instant suit against?

[38] Article 88(1) and (5) of the Constitution state as follows:

“88. (1) There shall be an Attorney-General of Ghana who shall be a Minister of State and the principal legal adviser to the Government.

(5) The Attorney-General shall be responsible *for the institution and conduct of all civil cases on behalf of the State; and all civil proceedings against the State shall be instituted against the Attorney-General as defendant.*”

In **AMEGATCHER v. ATTORNEY GENERAL AND OTHERS** (Suit No. J1/1/2012 delivered on May 9, 2012 [2012] GHASC 26, the Supreme Court explained Article 88 (5) when it stated as follows:

“... we consider that the time has come for a realistic revisit to article 88(5). Accordingly, we come down on Articles 88(5) as follows. All the constitutionally established independent bodies like the Commission on Human Rights and Administrative Justice, The Electoral Commission, etc. can sue and be sued on their own relating to their functions per counsel of their choice.

Any person affected by an action involving the State can upon application be joined to such action, to protect his or its interest. With regard to the Judiciary and the Legislature, where their position on an issue is in conflict with that of the Attorney-General they may proceed on their own by counsel of their choice. However, any of these bodies referred to may access the services of the Attorney-General if they so choose”.

[39] From the above, the obvious question to be asked is, has the Attorney-General been sued in this suit because the Plaintiff's claim is against the Judiciary? And if yes, for what reason? The Plaintiff does not give any reason for joining the 1st Defendant. The 2nd Defendant is the Registrar of the Circuit Court, Tema, and in the same way I pose the question, why has the Registrar been sued? I note that suing a Registrar of the Court, including Registrars of the Superior Courts, has been held to be legal because Registrars do not belong to the class of persons exempted or indemnified under article 127(3) of the Constitution 1992 and Section 113 of the Courts Act, 1993 (Act 459). Consequently, in the absence of such immunity, a Registrar may be sued by any party who is adversely affected by the actions of a Registrar, whether pecuniary or otherwise. See the Supreme Court case the **REPUBLIC v. JUDICIAL SERVICE OF GHANA, EX PARTE CATHERINE De SOUZA** (J5/12/2017) delivered on 11 April, 2017 **[2017] GHASC 38**. But I dare say that the liability of a Registrar in the performance of his duties like all other public officers should be considered in the context of its reasonability and the ethics governing his work.

[40] Again, from the pleadings, there is no direct evidence as to why the Registrar was sued in this case. However, a glimpse of the reason is ascertained from the cross-examination of the current registrar of the Court, Madam Mary Haizel, by Counsel for the Plaintiff. This is what transpired when she testified on November 1, 2021:

“Q: You have just indicated in your evidence-in-chief that you have worked with the Judicial Service for thirty-five (35) years now. Not so?

A: My Lord I have worked with the service for thirty-five (35) years now.

Q: For these number of years, you are familiar with the workings and processes of the Court. Is that not the case?

A: I am familiar with the processes.

Q: You know that once the Court makes an order, directed at a person or body that order must be complied. Is that not so?

A: My Lord, yes....

Q: From paragraph 12 of your witness statement the judge in refusing the application assured the parties of an expedited trial to unravel the controversies surrounding the car as at August 2013. Is that not the case?

A: My Lord it was December 2013 not August 2013.

Q: And till date the trial is still ongoing and not yet completed. Is that not so?

A: Yes, my Lord.

Q: So, it would be about 8 years since the vehicle was ordered to be detained. Is that not the case?

A: That is so but because of the transfer of judges...

Q: The Honourable judge in refusing the application for the release of the Toyota Camry, at page 5 of the said Ruling made an order to the effect that the two (2) vehicles Toyota Corolla and the Toyota Camry in contention which were in the possession of the police be kept in the Court premises with the keys kept by the Registrar. Is that not the case?

A: My Lord that is so but the police refused to bring the car to the Court premises.

Q: So, when the police refused to bring the car to the Court premises, what did the Registrar do about that refusal?

A: My Lord as I said, at that year I was not the Registrar so I did not know what my predecessor did or did not do.

Q: I am putting it to you that the Registrar failed to comply with the clear order of the Court and left the vehicles with the Police who parked it at the Police Station?

A: My Lord I cannot say he failed or did not fail in doing his work.

Q: The Toyota Camry was parked in the open and exposed to the sun and the harsh conditions of the rain. I put that to you?

A: My Lord since the car was not parked at the Court premises I cannot tell where the police parked it.

Q: They were then deteriorated and most of the parts were destroyed. I put that to you?

A: I did not see the car so I cannot tell whether the parts were deteriorated or not.

- Q: Most of the parts of the car had to be replaced and repaired before the Toyota Camry was motorable. I put that to you?
- A: I have no idea about the parts.
- Q: I am putting it to you that the Registrar failed in his duties when he did not carry out the orders of the Court to park the Toyota Camry at the Court premises and keep the keys?
- A: My Lord I cannot answer for the Registrar.
- Q: The actions and inactions of the Registrar resulted in great loss to the Plaintiff as her car was exposed to the harsh weather and deteriorated beyond recognition.
- A: My Lord as I said I cannot answer for the Registrar as to whether he did his work well or not”.

[41] From the above exchange it is clear that the Plaintiff contends that because the Registrar failed to keep the keys of the vehicle and to have the vehicle parked at the Court premises, the police kept the vehicle and “parked it in the open and exposed it to the sun and the harsh conditions of the rain”, therefore the Registrar is liable for the deterioration of the vehicle. In my respectful opinion, the Plaintiff reasons are not justifiable at all because, is the Plaintiff saying that had the vehicle been “parked” at the Court premises it would have been in a room and not in an open place? In any case, how would that have allowed the Plaintiff to earn the daily earnings she complains she lost as a result of the detention of the vehicle? I am of the respectful opinion that the manner in which the Plaintiff has pursued this litigation is out of proportion to what is at stake. To my mind, the contention of the Plaintiff that the failure of the Registrar to ensure that the keys of the vehicle was locked in her office and the vehicle parked at the court house has no rational connection to the deterioration of the vehicle. How can the Registrar be sued for the order of detention/preservation made by the Court, which order has not been set aside? The Court is mindful of the fact that applications were made at both the Circuit Court and the High Court for the release of the vehicle but they were refused. To my mind, nothing stopped the Plaintiff from following up to the Court of Appeal and/or the Supreme Court to have the order reversed.

[42] In my view, in the case at bar, the Registrar did not do anything to prevent the Plaintiff's vehicle from been released as there was no order that the vehicle be released. Yes, the fact that the

vehicle was not parked at the Court premises as stated by the Court was clearly not in compliance with the order. But, in this case even if that had been done the Registrar could not have released the vehicle to the Plaintiff because the order of the Court was that the vehicle be detained/preserved. In this case, I am of the view that the Registrar did not act *ultra vires* the scope of his duties or powers in the exercise of his *judicial functions* and suing him to my mind is without any legal basis.

[43] In my respectful opinion, the Plaintiff has launched a flanking and disguised attack on the judiciary because this action is clearly against the decision of the Circuit Court Judge, Tema with the Registrar used as a transparent ruse. In the Court's opinion, the Plaintiff's action is only a pretext, cloak and camouflage suit against the judge's decision and nothing else, which cannot be permitted. **Article 125(1) of the Constitution 1992** provides that justice emanates from the people of Ghana and shall be administered in the name of the Republic by the Judiciary which shall be independent and subject only to this Constitution. It is further provided in **Article 127 (3)** that:

“A Justice of a Superior Court, or any person exercising judicial power, shall not be liable to any action or suit for any act or omission by him in the exercise of the judicial power”.

Further, The Courts Act, 1993 (Act 459) - Section 113—titled - Non-Liability of Judges, Magistrates and Tribunal Members in Exercise of Functions. Also provides that;

A Judge of the Superior Court, a Circuit Judge, a Magistrate, panel members of a Regional Tribunal, and Juvenile Courts shall not be liable to any action or suit for any matter or thing done in the performance of their functions as such officers. [As amended by the Courts (Amendment) Act, 2002 (Act 620), sch. to s.7]

Also, in **EX PARTE CATHERINE De SOUZA SUPRA** the Supreme Court reiterated the immunity of persons who exercise judicial power and further stated that

“Indeed article 127 read as a whole seeks to establish the independence of the judiciary and the indemnity offered to those exercising judicial power. We declare that, the class of persons who are exempted or indemnified under articles 127(3) of the Constitution are limited to those exercising judicial power.”

Indeed, when the Circuit Court judge made the decision, she was exercising judicial power and therefore cannot be sued.

[44] In my respectful opinion, there are several privileges and immunities aimed at promoting the administration of justice and they are accepted as part of public policy. They include immunities for judges from testifying in Court and also being sued for decisions made as part of their official duties as in this case. In my opinion, the judge performing her judicial function cannot be sued by using the Registrar as a cloak for damages for wrongful detention as the Plaintiff has done in this case. The reasons elicited from the referenced cross-examination above as the bases for the suit against the Registrar is with respect not intelligible and reasonable at all. Having reviewed the ruling, I am of the view that it was not an erroneous exercise of judgment by the judge and therefore to my mind the vehicle was not wrongfully detained. The vehicle was detained pursuant to a valid court order.

[45] I note that Counsel for the Plaintiff in her written submission to the Court stated that ***“The Police had a duty to diligently investigate the true ownership and release same to the Plaintiff. Once there was no shred of evidence as to a contrary ownership of the car but the Plaintiff, then I submit that, the continued detention of Plaintiff’s car was unlawful”***. Again, the court is in quandary as to the purpose of this submission because the vehicle was not detained by the police but by a court order. If indeed, the Plaintiff and Counsel are of the view that the vehicle was detained due to shoddy investigation by the police, then why was the Police Service and the Inspector General of Police (IGP) not sued?

[46] In the same way, I find the position of the 3rd Defendant that “agents of the 1st and 2nd Defendants” are to be blamed for the deterioration of the Plaintiff’s vehicle preposterous because who are the said agents of the 1st and 2nd Defendants referred to? Is it the judge who made the decision to detain the vehicle or the Registrar whose only crime is that he did not ensure that the vehicle was parked at the Court premises? As stated elsewhere in this judgment, I have no idea why the Attorney-General was sued. I note that Counsel for the 1st and 2nd Defendants also blamed the police in an attempt to exonerate the Registrar. Again, that was also unfortunate and a lazy way of looking at the issue and baseless, because with due deference to Counsel she ought to

have been able to raise the issue whether there was any reasonable cause of action against the 1st and 2nd Defendants by the Plaintiff in the first place. This matter should not have travelled to this stage, in my respectful opinion because it is clear there was no cause of action against the Defendants based on the pleadings.

[47] Based on all of the above analysis, I hereby answer the rephrased issue at paragraph 35 of this judgment in the negative. That is, that the Plaintiff's claims for;

- a. Cost of repairing the car estimated at GH¢157,792.25 or alternatively the market value of the car estimated at GH¢50,000.00.
- b. Specific damages for loss of expected earnings of GH¢68,400.00.
- c. Interest of GH¢68,400.00 from the date of filing this writ to the date of final judgment.
- d. Damages for unlawful detention of car - **are not sustainable**.

vii. Conclusion & Disposition:

[48] As stated above, the vehicle was not unlawfully detained and therefore none of the named Defendants can be held liable. The Registrar cannot be held liable for the orders made by the Court. In not keeping the keys at the court and not having the vehicle parked at the Court premises did not in any way, shape or form prevent the Plaintiff from earning the daily sales from the vehicle and also there is no evidence that parking the vehicle at the Court premises would have prevented the deterioration of the vehicle. Also, with regards to the 3rd Defendant, the Plaintiff herself admitted that it took many steps to have the vehicle released but to no avail. To that extent, it is unreasonable that it is now being blamed for the detention of the vehicle. Consequently, all the above reliefs are **dismissed**. However, the Plaintiff's reliefs **A** and **B** are granted, though the Court notes that the Plaintiff has had the vehicle since December 2016.

[49] Finally, I cannot gloss over the fact that the time has come for all of us who are involved in the administration of justice to take a second look at the issue of delay in the system, because it cannot be denied that it has become a scar on our national conscience. I note that in ordering that the vehicle be detained, the Court stated that there shall be an expedited trial. This was in December 2013 but the record shows that the trial is still ongoing. Clearly, in my respectful opinion, for such a simple criminal matter to take this long delay in the adjudication of it is unacceptable and indeed

unwarranted. Delays in the administration of justice, impact negatively by eroding public trust and confidence in the justice system and give a wrong impression about the administration of justice in this country, and so we need to do something about it. I am also of the respectful opinion that, in this case the three years detention of the vehicle until it was ordered released by this court did not achieve any useful purpose and therefore going forward such preservation orders ought to be looked at again by all judicial officers.

[50] I cannot conclude this judgment without expressing my admiration for all Counsel in this matter in the way they comported themselves and the civil manner the trial was conducted and respected each other. They all deserve my commendation. No order as to cost as both Defendants' Counsel have waived costs.

(SGD)
KWEKU T. ACKAAH-BOAFO, J
(JUSTICE OF THE HIGH COURT)

Cases referred to:

1. EVELYN ASIEDU OFFEI v. YAW ASAMOAH & ODEHYE KWAKU GYAPONG
Civil Appeal Number No. J4/64/2016 delivered 25th April 2018
2. OKUDZETO ABLAKWA (NO. 2) v. ATTORNEY GENERAL & ATTORNEY [2012] 2
SCGLR 845.
3. ABABIO v. AKWASI III [1994 – 1995] VOL 2 GBR 774.
4. RE ASHALLEY BOTWE LANDS: ADJETEY AGBOSU & ORS v KOTEY & ORS
[2003-04] SCGLR 420
5. AMEGATCHER v. ATTORNEY GENERAL AND OTHERS [2012] GHASC 26
6. REPUBLIC v. JUDICIAL SERVICE OF GHANA, EX PARTE CATHERINE De SOUZA
[2017] GHASC 38.

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..... REGISTRAR
HIGH COURT 28/06/2022
GENERAL JURISDICTION, LCC-ACCRA