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AN ATLAS OF THE HIGH COURT (CIVIL PROCEDURE) RULES, C.I. 47

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Rules of Court

In every known jurisdiction, rules of court are pivotal to civil procedure. No court can conduct its business without a code of rules. These rules provide an organized and expeditious method by which the parties to a dispute can assert and defend their claims in court. The centrality of rules is aptly illustrated by the fact that no matter how good a brief might appear to be, if it is not carefully conducted in court, in accordance with rules laid down for the court's application, the consequences can be dreadful.

In stark contrast to England for example, where the Rules of the Supreme Court (R.S.C or the White Book) lay down broad principles of practice and procedure that are applied by the High Courts, County Courts and the Court of Appeal, in Ghana, it is fair to say that our hierarchy of courts, in this instance the Supreme Court, the Court of Appeal, the High Court, and District Courts have their respective and peculiar rules of court.

Orders and Rules

In Ghana as in other jurisdictions, code of procedure for the court is couched in the nature of ORDERS and RULES. "Orders" refer to "actions" capable of being taken in a court while "rules" refer to the steps to be taken or procedures to be adopted in taking those actions. This section provides an atlas of the 81 Orders and over 800 Rules that make up the High Court (Civil Procedure) Rules, 2004 C.I.47.

ORDER 1 – PRELIMINARY MATTERS

Rule 1 (1) – provides that the Rules book apply to civil actions in the High Court as well as Circuit Court, with the necessary modifications. A note should therefore be taken of the fact that certain orders apply only to the High Court to the exclusion of the Circuit Court. Examples include **Orders 50, 51, 52, 53, 54, 54, 55, 56, 58, 60, 61, 62, 63 and 67**.

Rule 1 (2) covers the underlying principles, and requires the rules to be interpreted to achieve: speedy trial and effective justice, avoidance of delays and unnecessary expense, effective and final determination, and avoidance of a multiplicity of proceedings. Consider

also **Ord.37 r. 2** which enjoins on lawyers and the court a duty to avoid delays and act with expedition.

Rule 2 - relates to both publicity of proceedings and hearings in camera. Non-public hearings are to be specified in the record book – sub-rule (3).

Rule 3 - relates to conduct of proceedings by a person other than a party.

Rule 3 - relates to acting without authority, non-service of writ and unauthorized representation. **Authority:** - **Barclays Bank of Ghana Ltd v. Ghana Cables Company Ltd & Others [1998-99] SCGLR 1**

ORDER 2- RULES ON COMMENCEMENT OF PROCEEDINGS

Rule 1 relates to the title of the parties; E.g. the Plaintiff and Defendant.

Rule 2 requires to all civil proceedings to be commenced by writ. *Note however actions to be commenced by petition.

Rule 3 requires every writ to be endorsed with a statement of claim, relief or remedy sought, and failure to make such endorsement is fatal. Put otherwise a writ which is unendorsed with the substantive claim in accordance with the mandatory provisions of Order 3 rule 1 is a nullity. – **Authorities:** - **La Palm Beach Ltd v Boatene II (2008)14 MLRG 44; Rep. v. High Court, Tema; Ex-Parte Owners Of M.V. Essco Spirit [2003-2004] SCGLR 689**

Rule 3 (2) requires the occupational and residential address of the parties to be endorsed on the writ; it also requires that the address of the plaintiff rather than that of his/her lawyer be stipulated on the writ.

Rule 4 relates to Indorsement as to capacity. It requires that where a person sues in representative capacity, that capacity be indorsed on writ. **Authorities:** - **Ghana Muslims Representative Council V. Salifu [1975] 2 GLR 246, CA; Nkua V. Konadu & Boateng [2009] SCGLR 134; Agbesi V. Ghana Ports And Harbours Authority [2007-2008] SCGLR 469**

Rule 6 requires all writs to be filed together with a statement of claim. Where the plaintiff omits to do this a defendant may apply for a dismissal of action under – **Order 11 rule 1 (2)**.

Rule 8 relates to concurrent writs.

Rule 9 relates to the twelve (12) months life span of a writ, to renewal of the writ upon expiry via application, where same is not served after 12 months of having been issued.

ORDER 3 – RULES ON VENUE AND TRANSFER OF ACTION

Rule 1 relates to the venue of proceedings.

Rule 2 relates to transfer of proceedings

ORDER 4 – RULES ON PARTIES AND CAUSES OF ACTION

Rule 1 relates to right to take proceedings. Under the Rules every person may commence and carry on proceedings personally or by a lawyer. However, a corporate body and a next friend or guardian *ad litem* of a disabled person must act through a lawyer.

Rule 2 relates to joinder of causes of action. **Authority:** - **AGBESI v. GPHA [2007-2008] SCGLR 469.**

Rule 3 relates to Joinder of Parties

Rule 4 relates to separate trials.

Rule 5 relates to misjoinder and non-joinder of parties. **Authority:** **Morkor v. Kumah [1998-99] SCGLR 620 at p.623**

Rule 6 relates to change of parties by reason of death or bankruptcy. By virtue of subrule (3) – An application for substitution may be made ex-parte

ORDER 5 RULES ON PERSONS WITH DISABILITY

Rule 1 (4) relates to the rules on where a party experiences mental disorder of a party after proceedings are begun . **Rule 1 (3)** of Order 4 requires a next friend or guardian *ad litem* to act by a lawyer.

Rule 3 relates to a party with disability by dint of being below 18 – and the steps to be taken upon attainment of age 18 or the age of majority

Rule 4 relates to normal person who experiences a mental disorder during pendency of proceedings and the requisite steps to be taken by Counsel.

Rule 5 relates to default of appearance by a person with disability.

Rule 7 relates to admission by persons with disability not to be implied from pleading.

Rule 8 (2) relates to the need for compromises or settlements made with a person with disability to be approved by court; failure of which, such compromises or settlements would be rendered invalid.

Rule 9 (1) relates to the rules on service of documents on persons with disability.

ORDER 7 – RULES ON SERVICE OF PROCESS

Order 7 rules 1 to 15 relate to the rules applicable to service of court processes. Rule 1 relates to persons to be served with documents; **Rule 2** relates to personal service; **Rule 3** relates to how personal service is to be properly served. **Rule 4** relates to how service of documents which do not necessarily require personal service are to be effected; **Rule 5** relates to service of documents on particular persons. **Authority: Samuel Kwasi Ntiamoah v. Kwaky Ayensu Opere-Addo [2009] 5 GMJ 198 at p. 203; Rule 6** and 7 relates to how to obtain substituted service, as well as matters subsequent to obtaining the Order. **Rule 8** relates to computation of time for service. Subrule (3) provides the rules applicable where service is made by means of registered mail. Most importantly, **Rule 13** relates to service of a writ on an agent of a principal resident outside Ghana, while **Rule 15** relates to service of a writ in certain cases affecting land.

ORDER 8 – RULES ON SERVICE OUT OF JURISDICTION

In matters where there is a need for service out of jurisdiction only notice of writ needs be served out of the jurisdiction.

Rule 4 relates to orders granting leave to serve notice out of jurisdiction to fix or indicate time for appearance.

Rule 6 relates to authorities to effect service out of jurisdiction.

ORDER 9 – RULES ON APPEARANCE

Rule 1 relates to persons who may file notice of appearance in court. Take notice of sub-rules (2) and (3) relating to occupational and residential address of a defendant as well as situations when these material particulars are not disclosed.

Rule 5 relates to the eight (8) day rule required for entry of appearance – or as ordered by the court.

Rule 6 (1) relates to late appearances – This type of appearance are to be made with leave of the Court.

Rule 7 relates to conditional appearance. In accordance with Rule 8 a conditional appearance would become unconditional if no action is taken within 14 days of the date of entry of such conditional appearance.

ORDER 10 – RULES ON DEFAULT OF APPEARANCE

Rule 1 relates to claims for liquidated demand and the requisite steps to be taken by the plaintiff and the Court.

Rule 2 relates to claims for unliquidated demand, the requisite steps to be taken by the plaintiff and the Court.

Rule 3 relates to claims for possession of immovable property and the steps the requisite steps to be taken by the plaintiff and the Court.

Rule 5 covers mixed claims.

Rule 6 covers actions not specifically provided for. **Authority: Nii Odai Ayiku v. Attorney – General And (Wor Nii Bortelabi Borketey Larweh) 5 GMJ 148 at pp.155-156.**

Rule 7 relates to a proof of service of the writ to be produced before judgment could be entered in default of appearance.

Rule 8 relates to the setting aside of a default judgment. **Authority: Ankumah v. City Investment Co Ltd. [2007-2008] SCGLR 1064**

Rule 9 relates to moneylenders' action. In such actions no judgment is to be entered in default except with leave of Court. Then again application for leave in such suits must be on notice.

Rule 10 relates to actions on mortgages. In such actions no judgment is to be entered except with leave of Court. Then again application for leave in such suits must be made on notice to the other side.

ORDER 11 – RULES ON PLEADINGS GENERALLY

Rules 1 to 19 covers **Authorities:** - **Western Hardwoods Enterprises Ltd & Anor v. West African Enterprises Ltd [1998-99] SCGLR 105.** This case held that – where the pleadings of parties are at ad idem on a fact or an issue, a plaintiff is not bound to lead evidence to establish that fact or issue.

ORDER 12 – RULES ON COUNTER-CLAIMS

The rules on counterclaim cover rules 1 to 8. **Authorities:** - (1) **Effisah v. Ansah [2005-2006] SCGLR 943;** (2) **Hanna Assi (No2) v. GIHOC Refrigeration & Household Products (No2) [2007-2008] SCGLR 16,** (3) **Republic v High Court, Kumasi; Ex-Parte Boateng [2007-2008] SCGLR 404** and (4) **Agbesi v Ghana Ports and Harbours Authority [2007-2008] SCGLR 471.** Take notice that a court has power to amend a claim to cover appropriate relief though unclaimed.

ORDER 13 – RULES ON DEFAULT OF DEFENCE

The rules on default of defense cover Rules 1- ...Similar to default of appearance – Difference is application to be on notice instead of ex-parte in some cases with regard to default proceedings;

ORDER 14 – RULES ON SUMMARY JUDGMENT

Rules 1 to 12 cover the rules on summary judgment. Take notice of rule 12 on actions and claims excluded from summary judgment, such as (a) probate, matrimonial or maritime proceedings; (b) a claim for defamation, malicious prosecution, seduction or breach of promise of marriage; or claim based on an allegation of fraud. The Rules here cover conditions to be met before a grant of summary judgment: **Authorities:** - (1) **Sanunu v. Salifu [2009] SCGLR 586;** (2) **Mustapha v. NIB [2005-2006] SCGLR 1037;** (3) **Sam Jonah v. Duodu Kumi [2003-2004] SCGLR 50 at p51;** (4) **Sikasi (Gh) Ltd v. Aluminium Enterprise Ltd [1999-2000] 2 GLR114;** (5) **Rep. v. High Court, Accra; Ex-Parte Allgate Co Ltd (Amalgamated Bank – Interested Party) [2007-2008] 1041.** Also covered are the rules relating to the setting aside of a summary judgment: **Authorities:** - **Morkor v. Kumah [1998-99] SCGLR 620.**

ORDER 16 – RULES ON AMENDMENT

Order 16 covers wide-ranging rules relevant to amendment of pleadings. **Rule 1** relates to amendment of writ without leave; **Rule 2** relates to amendment of notice of appearance to be by leave of the Court. **Rule 3** relates to amendment of pleadings generally without leave; **Rule 5** relates to amendment of writ or pleading with leave.

Rule 6 relates to amendment during long vacation; while **Rule 7** relates to amendment of other documents aside of pleadings.

Rule 8 covers the consequences of a failure to amend after an Order by Court; **Rule 9** relates to method of amending. **Rule 11** requires leave to amend to be on notice.

ORDER 17 – RULES ON WITHDRAWAL AND DISCONTINUANCE

ORDER 17 covers a raft of rules relevant to withdrawal and discontinuance of actions

ORDER 19 – RULES ON APPLICATIONS

Order 20 covers rules relevant to the making of applications in Court. **Rules 1** relates to application to be made by motion; **Rule 2** relates to motions on notice

Rules 3 relates to Ex-parte Motions. **Authority - Barclays Bank Ghana Ltd v. Ghana Cables Co Ltd [1998-99] SCGLR Per Acquah J.S.C Order 25 Rule 1 (7) On Ex-Parte Applications.**

ORDER 20 – RULES ON AFFIDAVITS GENERALLY.

ORDER 20 covers the rules relevant to affidavits filed in the course of proceedings

ORDER 21 – RULES ON DISCOVERY AND INSPECTION OF DOCUMENTS

Order 21 relates to rules relevant to discovery and inspection of documents

ORDER 23 – RULES ON ADMISSIONS

ORDER 23 relates to rules relevant to admissions made during proceedings

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ORDER 25 – RULES ON INTERLOCUTORY INJUNCTIONS AND INTERIM PRESERVATION OF PROPERTY

RULES 1 to 9 of Order 25 covers the rules on both interlocutory injunctions and interim preservation of property. Rule 9 on undertakings is vital. **Authorities: The Rep. v. William Ansah – Out & Anor, (Koans Building Solutions Ltd – Interested Party) [2009] SCGLR 141, per Anin-Yeboah J.S.C.**

ORDER 26 – RULES ON COURT EXPERT

ORDER 27 – RULES ON RECEIVER

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ORDER 31 – RULES ON ASSIGNMENT AND CONSOLIDATION

***ORDER 32 – RULES ON APPLICATION FOR DIRECTIONS**

Order 32 cover issues relevant to case management. The cardinal issues here is that it is the duty of trial judge to admit issues central to the litigation: **Authorities: - (1) Smith v. Blankson (Substituted By Baffor) [2007-2008] SCGLR 374 (2) Ankumah v. City Investments Co Ltd [2007-2008] SCGLR 1064 (On Failure To Take Summons).**

Notice should be taken of the new amendment involving insertion of a new rule 7A in Order 32 by C.I. 87 providing for mandatory case management (CM), CM conference, pre-trial checklist and related matters.

***ORDER 33 ..**

NOTE:

Thanks for reading this. We're having fun researching and adding a litany of cases and useful commentary. For the updated continuation, kindly look out for the upcoming monograph - **DICKSON'S CIVIL PROCEDURE PRECEDENTS**

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