



WRIT OF SUMMONS

(Order 2 rule 3(1))

WRIT ISSUED FROM Accra, 06-07 2022

SUIT NO. cm/boc/0585/2022

IN THE HIGH COURT OF JUSTICE
ACCRA

BETWEEN

EMMANUEL BORKETEY BORTEY

PLAINTIFF

AND

1. ALLIANCE MOTORS GHANA LIMITED,
AIRPORT COMMERCIAL CENTRE, ACCRA
2. AFCL GHANA LIMITED, ACCRA
3. JAGUAR LAND ROVER (SOUTH AFRICA) (PTY) LTD.,
28 VICTORIA LINK, ROUTE 21 CORPORATE PARK,
NELLMAPIUS DRIVE, IRENE X30CENTURION,
TSHWANE, GAUTENG, SOUTH AFRICA

DEFENDANT

(Plaintiff to direct service)

To

AN ACTION having been commenced against you by the issue of this writ by the above-named Plaintiff
EMMANUEL BORKETEY BORTEY

YOU ARE HEREBY COMMANDED that within EIGHT DAYS after service of this writ on you inclusive of the
day of service you do cause an appearance to be entered for you.

- | | | |
|---|-----------------------|-----------|
| 1. ALLIANCE MOTORS GHANA LIMITED | 2. AFCL GHANA LIMITED | 3. JAGUAR |
| LAND ROVER (SOUTH AFRICA) (PTY) LIMITED | | |

AND TAKE NOTICE that in default of your so doing, judgment may be given in your absence without further
notice to you ALLIANCE MOTORS GHANA LIMITED 2. AFCL GHANA LIMITED 3. JAGUAR
LAND ROVER (SOUTH AFRICA) (PTY) LIMITED

Dated this 6th day of July
Chief Justice of Ghana [Signature]

2022

ANINYEBOAH

NB: This writ is to be served within twelve calendar months from the date of issue unless, it is renewed within six calendar months from the date of that renewal.
The defendant may appear hereto by filing a notice of appearance either personally or by a lawyer at Form 5 at the Registry of the Court of issue of the writ at
A defendant appearing personally may, if he desire give notice of

appearance by post.

*State name, place of residence or business address of plaintiff if known (not P.O. Box number).

**State name, place of residence or business address of defendant (not P.O. Box number).


FORM 1

STATEMENT OF CLAIM

The Plaintiff's claim against the Defendants jointly and severally as follows:

- a. A declaration that the failure of the 1st and 2nd Defendants to declare their relationship amounts to concealment of a material fact.
- b. A declaration that the vehicle, subject matter of the suit, was defective.
- c. An order directed at the Defendants to refund the total amount of Ninety-Six Thousand Five Hundred and Fifty-Five Dollars Eighty Cents (US\$ 96,555.80) being the amount paid for the purchase of the vehicle
- d. Interest on the said sum of Ninety-Six Thousand Five Hundred and Fifty-Five Dollars Eighty Cents (US\$ 96,555.80) from August 2020 until the date of final payment.
- e. Damages for breach of contract.
- f. Costs, including Solicitor's fees.

This writ was issued by


 JONES BORTEYE APPLERE KULENDI @LAW
 eGAR 01897/22

whose address for service is H/SE NO 10A BORTEY AVE, ACCRA

Kulendi Law
 — Legal Practitioner & Notaries Public —
 10A Bortey Avenue, Near Nyaho Medical Centre
 ACCRA
 TEL +233 303 969 611 / 613
 Cell Phone +233 024 367 7776 / 020 817 6450
 Email office@kulendilaw.com.gh

Agent for Plaintiff

Address Number and date of lawyer's current licence. eGAR 01897/22

Lawyer for the plaintiff who resides at ACCRA

Indorsement to be made within 3 days after service

This writ was served by me at
 on the defendant
 on the day of
 endorsed the day of

Signed.....
 Address.....

NOTE: If the plaintiff's claim is for a liquidated demand only, further proceedings will be stayed if within the time limited for appearance the defendant pays the amount claimed to the plaintiff, his lawyer or his agent or into court as provided for in Order 2 rule 3(2).

IN THE SUPERIOR COURT OF JUDICATURE
IN THE HIGH COURT OF JUSTICE
COMMERCIAL DIVISION
ACCRA AD-2022

6/7/2022
2.20
UJ
COMMERCIAL DIVISION OF THE
HIGH COURT ACCRA

EMMANUEL BORKETEY BORTEY
BLOCK 8 PLOT 34-45
ANKWA DOBORO
NSAWAM-ADOAGYIRI
EASTERN REGION

PLAINTIFF

VRS

1. ALLIANCE MOTORS GHANA LIMITED
AIRPORT COMMERCIAL CENTRE
ACCRA
2. AFCL GHANA LIMITED
ACCRA
3. JAGUAR LAND ROVER (S.A) (PTY) LTD.
28 VICTORIA LINK,
ROUTE 21 CORPORATE PARK,
NELLMAPIUS DRIVE,
IRENE X30,
CENTURION, TSHWANE,
GAUTENG, SOUTH AFRICA

DEFENDANTS

(Plaintiff shall direct service)

STATEMENT OF CLAIM

1. Plaintiff is a businessman ordinarily resident at Block 8 Plot 34-45, Ankwa Dobro, near Nsawam in the Eastern Region of the Republic of Ghana.
2. The 1st Defendant is a company duly registered in Ghana and is the authorised distributor of Land Rover range of vehicles in Ghana.
3. The 2nd Defendant is a company duly registered in Ghana, an associated company of the 1st Defendant and is engaged wholly in the provision of credit to customers of the 1st Defendant.
4. The 1st Defendant is a subsidiary of Tata Africa Holdings (Ghana) Limited, whereas the 2nd Defendant is a captive finance company of Tata International Singapore Pte Limited, a member of the Tata Motors of India Group.
5. The 3rd Defendant is a subsidiary of Tata Motors and is the manufacturer of the Land Rover range of vehicles in Sub-Saharan Africa including the vehicle, subject matter of the instant suit, and is registered to carry on business in South Africa.

6. Plaintiff says that sometime in July, 2020 he was desirous of acquiring a robust high performance vehicle with high clearance to assist with his cross-country travels as a businessman and thus approached the 1st Defendant to purchase a brand new Land Rover Defender 2020 year model which the 1st Defendant was offering for sale at a price of One Hundred and Sixty-Eight Thousand United States Dollars (US\$ 168,000.00).
7. Plaintiff says that he had at all material times in the course of purchasing the vehicle, subject matter of this suit, dealt with the sales and marketing officers of the 1st Defendant.
8. Plaintiff says that following the conclusion of the discussions on the sale, the 1st Defendant introduced the Plaintiff to AFCL Ghana Limited, the 2nd Defendant herein, as a company that could grant credit to the Plaintiff towards the purchase.
9. Plaintiff avers that that was the first time he had heard of the existence of the 2nd Defendant and that but for the introduction by the 1st Defendant, he would not have had any dealings with the 2nd Defendant.
10. Plaintiff asseverates that he has become aware that there exists a close symbiotic relationship between the 1st and the 2nd Defendants, however, both the 1st and 2nd Defendants failed to disclose this relationship to the Plaintiff and thereby led the Plaintiff to believe that the 2nd Defendant was an independent financing institution ready and willing to finance the Plaintiff's purchase when that was not the case.
11. Plaintiff says that he engaged officers of the 2nd Defendant and subsequently entered into an agreement for the 2nd Defendant to finance the purchase of the vehicle, subject matter of the instant suit and that the total facility approved for disbursement was One Hundred and Fifty-One Thousand Two Hundred United States Dollars (US\$ 151,200.00).
12. Plaintiff says that the credit facility was to be repaid over a period of thirty-six (36) months at an interest rate of eleven (11%) percent per annum thereby bringing the total repayment amount to about One Hundred and Eighty-Four Thousand One Hundred and Forty-Four United States Dollars Thirty-Two Cents (US\$ 184,144.32)
13. Plaintiff says further that as part of the terms of the Credit agreement he paid a Deposit of Sixteen Thousand Eight Hundred United States Dollars (US\$ 16,800.00), a Service Fee of Three Thousand and Twenty-Four United States Dollars (US\$ 3,024.00) and was required to make a monthly payment of Five Thousand One Hundred and Five Dollars, Twelve Cents (US\$ 5,115.12) towards the repayment of the facility granted by the 2nd Defendant.
14. Plaintiff avers that he conscientiously made the monthly repayments without fail to the 2nd Defendant such that by October 2021, he had paid in total about Ninety-Six Thousand Five Hundred and Fifty Dollars Eighty Cents (US\$ 96,555.80) to the 2nd Defendant for the benefit of the 1st Defendant.

15. Plaintiff states that despite the many fees and charges he paid on the facility, he was made to pay a whopping amount of Nine Thousand Three Hundred and Fifteen United States Dollars (US\$ 9,315.00) as insurance premium which he duly paid but he was never shown any receipt as evidence of payment.
16. Plaintiff avers that the vehicle, a 2020 Land Rover Defender, was delivered to him on 29th July 2020, following the execution of the financing agreement with the 2nd Defendant and commenced the instalment payment from August 2020
17. Plaintiff says that he used the vehicle in the normal course of his life as a businessman and that he always followed the servicing schedules without fail.
18. Plaintiff says that sometime in October, 2021, he made a trip to the Northern part of Ghana and upon his return he sent the vehicle to the 1st Defendant's workshop for routine servicing at a time when the vehicle had recorded just about 13,000 kilometres on the odometer.
19. Plaintiff says that after the vehicle was returned to him, he realized that the "Check Engine Light" and the Tyre Pressure indicator light on the instrument cluster had lighted up and was not going off.
20. Plaintiff states that he returned the vehicle to the 1st Defendant for the faults showing on the instrument cluster to be fixed.
21. Plaintiff says that it took a long time for the 1st Defendant to revert to him about the state of the vehicle, until sometime later when he was called and informed that upon a full assessment of the vehicle, it was discovered that the engine was defective owing to a manufacturer's defect and as such the engine will have to be replaced.
22. Plaintiff avers that he was promised a courtesy car by the 1st Defendant but the 1st Defendant failed to deliver the courtesy car and this caused the Plaintiff to resort to other means to transport himself at great cost and expense.
23. Plaintiff avers that the engineers at the 1st Defendant company indicated to him that the 3rd Defendant had been notified of the development and that the 3rd Defendant had agreed to replace the engine and its ancillary components under the warranty governing the vehicle.
24. Plaintiff says that following the turn of events, he indicated to the officers of the 1st Defendant that he was no longer interested in the vehicle considering that the vehicle had not lived up to its billing as a robust and efficient vehicle.
25. Plaintiff states further that he requested that the vehicle be traded in to enable him top up and buy another brand of vehicle from the 1st Defendant.
26. Plaintiff says further that even though the 1st Defendant agreed to trade in the vehicle, the 1st Defendant proposed to offer an amount of One Hundred and

Twenty-Six Thousand United States Dollars (US\$ 126,000.00) for the vehicle, representing a depreciation of 25 percent, which proposal the Plaintiff rejected.

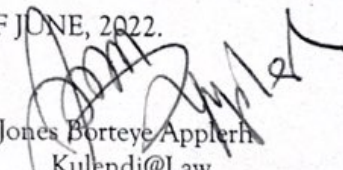
27. Plaintiff avers that after a very long silence and no communication whatsoever from the 1st Defendant he wrote a letter of complaint to the 2nd Defendant on the matter, after which 1st Defendant's Country Manager, in the company of another staff, came to visit him and to apologize for the unfortunate issue of the defective engine.
28. Plaintiff says that notwithstanding the apology from 1st Defendant's Country Manager, there was no further communication between himself and management of either the 1st and/or 2nd Defendant until he instructed his lawyers to write to the 1st Defendant.
29. Plaintiff says that he received a call from one of the officers of the 1st Defendant informing him that the vehicle had been fixed and inviting him to retrieve the vehicle but he declined the invitation and told the officer that he had referred the matter to his lawyers.
30. Plaintiff states further that considering the fact that the vehicle had failed to meet the promise of quality as was advertised by the Defendants, he caused his lawyers to write to 1st Defendant to indicate his rejection of the vehicle and demanded for the refund of the amount thus far paid, which amount was a total of Ninety-Six Thousand Five Hundred and Fifty-Five Dollars Eighty Cents (US\$ 96,555.80).
31. Plaintiff says that there have been exchanges of letters between his lawyers and lawyers for the 1st Defendant whereby the Plaintiff consistently reiterated his rejection of the vehicle and demand for the refund of the sum of Ninety-Six Thousand Five Hundred and Fifty-Five Dollars Eighty Cents (US\$ 96,555.80) paid so far towards the purchase of the vehicle but same has gone unheeded.
32. Plaintiff asseverates that in response to his letters, the 1st Defendant has indicated that the Plaintiff's demand for a refund of his money cannot be obliged and has thereby evinced a clear and unambiguous intention to deprive the Plaintiff of his funds paid towards the purchase of the vehicle even though same has been assessed to be defective.
33. Plaintiff says that by way of a letter, he communicated his discussions with the 1st Defendant to the 2nd Defendant who at all material times is a part owner of the vehicle, subject matter of the suit, but the 2nd Defendant has failed and/or neglected to engage with the 1st Defendant in order to resolve the issues, laying further credence to the proximate relationship existing between the 1st Defendant and the 2nd Defendant.
34. Plaintiff maintains that the 1st and 2nd Defendant have evinced a clear intention to deprive him of the funds he has thus far paid towards the purchase of the vehicle

35. Plaintiff contends further that the vehicle he purchased was defective and of unmerchantable quality and as such he is unable to accept the vehicle as same is not fit for purpose.
36. Plaintiff avers that unless ordered by this Honourable Court, Defendants will refuse to refund the sum paid for the defective vehicle sold to Plaintiff by Defendants.
37. Plaintiff says further that the 2nd Defendant would not take any steps to retrieve the monies he paid to them for the benefit of the 1st Defendant due to the relationship between the two Defendants even though the 2nd Defendant portrayed itself as an independent financing institution.

WHEREFORE Plaintiff claims against the Defendants jointly and severally as follows:

- a. A declaration that the failure of the 1st and 2nd Defendants to declare their relationship amounts to concealment of a material fact.
- b. A declaration that the vehicle, subject matter of the suit, was defective.
- c. An order directed at the Defendants to refund the total amount of Ninety-Six Thousand Five Hundred and Fifty-Five Dollars Eighty Cents (US\$ 96,555.80) being the amount paid for the purchase of the vehicle
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- e. Damages for breach of contract.
- f. Costs, including Solicitor's fees.

DATED AT MAALO CHAMBERS ACCRA THIS 30TH DAY OF JUNE, 2022.


Jones Borteye Applerh
Kulendi@Law
Solicitors for Plaintiff
eGAR 01897/22

The Registrar
High Court (Commercial Division)
Accra



AND TO THE ABOVE-NAMED DEFENDANTS