



**WRIT OF SUMMONS**

WRIT ISSUED FROM ACCRA 19/09/2022 (Order 2 rule 3(1))  
**IN THE HIGH COURT OF JUSTICE**  
ACCRA

SUIT No. GJ/1280/2022

**BETWEEN**

EDMUND BARWUAH  
[REDACTED]  
[REDACTED]

ACCRA

**AND**

VIVO ENERGY GHANA LIMITED  
JOHN EVANS ATTA MILLS HIGH STREET,  
ACCRA,

**(PLAINTIFF SHALL DIRECT SERVICE)**

AN ACTION having been commenced against you by the issue of this writ by the above-named Plaintiff **EDMUND BARWUAH**.

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 **VIVO ENERGY GHANA LTD**

AND TAKE NOTICE that in default of your so doing, judgment may be given in your absence without further notice to you **VIVO ENERGY GHANA LTD**



Dated this 19th day of

Sept,

2022

**ANNYIBOAH**

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. A defendant appearing personally may, if he desires 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 the defendant (not P.O. Box number).

SEALED

19/09/2022

FORM 1

HIGH COURT ACCRA

## STATEMENT OF CLAIM

The Plaintiff claims for:

- I. A declaration that the Defendant endangered the lives of the Plaintiff and his friend John Michael Appiah-Acheampong by fueling the 2017 Ford Explorer Vehicle with registration number CR 8509 19 they were travelling in with contaminated fuel.
- II. A declaration that the Defendant placed profit ahead of human lives by selling contaminated fuel to the Plaintiff and the General Public.
- III. A declaration that the Defendant owed the Plaintiff a duty of care to sell uncontaminated fuel to the Plaintiff.
- IV. A declaration that the Defendant breached that duty by selling fuel contaminated with water to the Plaintiff.
- V. A declaration that the Defendant has also breached the contract of sale between the Defendant and the Plaintiff.
- VI. A declaration that the Defendant's breach of duty of care and or contract of sale resulted in damage to the Plaintiff's 2017 Ford Explorer with registration number CR 8509 19.
- VII. An order directing the Defendant to replace the Plaintiff's 2017 Ford Explorer with a similar vehicle and of the same specifications.
- VIII. Special damages of US\$2.5million for Plaintiff's loss of business opportunity occasioned by the Defendant's Negligence and or breach of contract.

IX. Damages of GH¢ 600.00 per day for the loss of use of the Plaintiff's vehicle from the 28<sup>th</sup> day of August, 2022 till the Defendant replaces Plaintiff's car with similar vehicle.

X. Damages for breach of contract.

XI. Punitive damages.

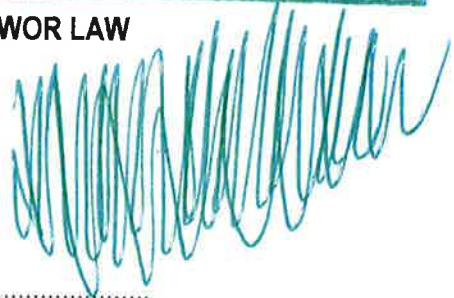
XII. General damages.

XIII. Cost including legal costs.

XIV. Any other relief(s) that the Court may deem fit.

**BLAGOGEE, BLACKSWORD & Co.**  
**ABLEWOR LAW CHAMBERS**  
No. 3 Pawpaw Street, East Legon - Accra  
T: 0302 - 554 104 / 0302 - 940 370  
M: 0243 - 313 331 / 0242 - 270 690  
Digital Address: GA - 413 - 0524  
Email: info@blagogeeandblacksword.com

This writ was issued by **CHARLES DELALI BLAGOGEE ESQ.**  
whose address for service is **BLAGOGEE, BLACKSWORD & CO., ABLEWOR LAW CHAMBERS, No. 3 PAWPAW STREET, EAST LEGON – ACCRA.**  
is Agent for **PLAINTIFF**  
And whose license number is **LN/GAR/00008/22**



Lawyer for the Plaintiff  
**CHARLES DELALI BLAGOGEE ESQ**

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)

Filed on 17/09/2022  
at 11:45  
REGISTRAR  
ACCRA

**IN THE SUPERIOR COURT OF JUDICATURE  
IN THE HIGH COURT OF JUSTICE  
GENERAL JURISDICTION DIVISION  
ACCRA**

**SUIT NO.**

**EDMUND BARWUAH**

**- PLAINTIFF**

**No. 4 INTEGRAL ESTATE**

**ASHONGMAN**

**ACCRA**

**VRS**

**VIVO ENERGY GHANA LIMITED**

**- DEFENDANT**

**JOHN EVANS ATTA MILLS HIGH STREET,**

**ACCRA,**

***(PLAINTIFF SHALL DIRECT SERVICE)***

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**STATEMENT OF CLAIM**

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1. The Plaintiff is a private citizen of Ghana, a marketing executive/businessman and owner of a Ford Explorer Vehicle, 2017 model, with registration number CR 8509 - 19.

2. The Defendant is an Oil Marketing Company operating fuel stations across Ghana under the brand name "**Shell**" and portrays itself as a market leader with significant knowledge and understanding of the oil business, *inter alia*.
3. The Plaintiff says that on the 28<sup>th</sup> day of August 2022, he travelled to Ho, Volta Region together with his friend by name John Michael Appiah-Acheampong for a charity project with his 2017 Ford Explorer aforementioned.
4. The Plaintiff says that due to a prior-scheduled business meeting in Accra at 3 pm, they had to return to Accra no later than 3 pm that day.
5. The Plaintiff says that on their way back and around midday, they needed to refuel the vehicle.
6. The Plaintiff says that they drove into the Defendant's Filling Station at Atimpoku in the Eastern Region of Ghana, to do the refuelling.
7. The Plaintiff avers that at his request and for valuable consideration the Defendant was supposed to fill the Plaintiff's tank with Petrol (super) to the tune of five hundred and seventy Ghana Cedis (GH¢ 570.00)
8. The Plaintiff says that the Defendant received consideration for Petrol (gasoline) and thus bore a duty to fill the Plaintiff's fuel tank with Petrol at the right quality and quantity and nothing more.
9. The Plaintiff further says that in the circumstances, the Defendant owed a Duty of Care to the Plaintiff and indeed the **General Public** to ensure that fuel products sold at its filling stations meet the required standards and that the fuel specifically sold to the Plaintiff met the required quality and quantity.

10. The Plaintiff says however that on the said 28<sup>th</sup> day of August 2022 and around midday the fuel sold to the Plaintiff by the Defendant for valuable consideration was contaminated, mixed with water, unsafe and endangered the lives of the Plaintiff and his friend.
11. The Plaintiff avers that shortly after exiting the Atimpoku Shell filling station and about a Kilometer drive, the Plaintiff's car started to jolt and stutter with extreme violence after which the engine ceased abruptly in the middle of the road whilst the vehicle was in motion.
12. The Plaintiff says that he and his friend suffered shock, fear, and panic as he had never experienced such a situation with his car before. Again, the real possibility of an accident happening and the resultant injury or possible death the situation had exposed them to additionally heightened their fear.
13. The Plaintiff says that the abrupt nature with which the car's engine ceased in the middle of the road put his life and that of the other occupant at risk and also risked the lives of other road users.
14. The Plaintiff says that when the car came to a stop, they suffered the indignity of having to push the car out of the road and started looking for a mechanic to quickly look at the car and resolve the issue as he had very important business commitments scheduled in Accra and hence could not afford to delay any further on the road.
15. The Plaintiff says that they eventually found a mechanic who agreed to work on the car.

16. The Plaintiff says that the mechanic upon an initial examination of the car asked the Plaintiff whether they bought fuel at the Shell filling station at Atimpoku which was just about a kilometre away.
17. The Plaintiff says that the mechanic's question surprised them as they had indeed bought fuel a few minutes earlier from the Defendant's Shell filling station.
18. The Plaintiff says that they confirmed to the mechanic that indeed they had purchased fuel from the said Shell filling station.
- 19. The Plaintiff says that the mechanic did not waste time informing them that the fuel they purchased was likely to have been contaminated and mixed with water (H<sub>2</sub>O) as other cars have experienced a similar situation in the past after purchasing fuel from the Defendant's said filling station.**
- 20. The Plaintiff says that the mechanic's suspicion was confirmed when he drained some of what was supposed to be petrol from the car and it turned out to be substantially water.**
21. The Plaintiff says that the mechanic incidentally had the phone number of the Defendant's filling station manager and immediately called him in the Plaintiff's presence and informed the station manager of the situation and explained to him on the phone that the fuel, just like the earlier incidents, was contaminated and mixed with water.
22. The plaintiff says that they left their car and tried to find a vehicle to transport them back to the Defendant's filling station and adds that they spent a considerable amount of time trying to find transportation and after several minutes of waiting



eventually managed to join a commercial minibus "trotro" to the Defendant's filling station.

23. The Plaintiff says that upon reaching the station and to their utter shock the Defendant was still selling and discharging the contaminated fuel to other unsuspecting customers despite the station manager being notified of the contamination about an hour earlier.

24. The Plaintiff says that he asked that the fuel attendant halts the sale of the contaminated fuel to other customers and then requested that the station manager fills a transparent bottle with the fuel being sold as he tried to deny that the fuel was contaminated and mixed with water.

25. The Plaintiff says that the manager initially refused to fill the transparent bottle with the fuel but upon the insistence of the Plaintiff and other members of the public who were also there to buy the petrol, the Defendant's manager hesitantly filled the transparent bottle and it was confirmed that the supposed fuel being sold to the general public was more water than petrol.

**26. The Plaintiff says that the Defendant knew that the fuel product it was selling to the public including the Plaintiff was contaminated and mixed with water and deliberately decided not only to shortchange the Plaintiff and the general public but also to put the lives of unsuspecting consumers at risk.**

**27. The Plaintiff says that the Defendant intentionally or negligently sold contaminated, unwholesome, adulterated, and unsafe fuel to Plaintiff.**



28. The Plaintiff avers that the Defendant's conduct was a *manifest breach* of the duty of care the Defendant owed to the Plaintiff.
29. The Plaintiff avers that the Defendant's breach of duty resulted in damage to the Plaintiff's vehicle aforesaid and caused the plaintiff to suffer loss.
30. The Plaintiff says that the Defendant has breached the duty of care cast upon the Defendant by law and has done so for selfish and unholy financial gain.
31. The Plaintiff says that the conduct of the Defendant in continuing to sell the contaminated product to unsuspecting customers despite being directly informed (*actual knowledge*) of the unwholesome nature of its product amounts to reckless disregard for lives and property of the Plaintiff and the general consuming public in favour of selfish financial gain and unjust enrichment.
32. The Plaintiff says that he engaged the mechanic, to drain the Plaintiff's tank of the contaminated fuel and re-filled it with uncontaminated fuel bought from a nearby "Goil" filling station. The Defendant's station manager paid for the fuel bought from the adjoining station in an admission of fault (*mea culpa*).
33. The Plaintiff says that they tried getting an alternative vehicle to get to Accra on time but were unsuccessful and their attempts were futile since it was a Sunday.
34. The Plaintiff says that all attempts to reschedule his meeting were unsuccessful, and resulted in a loss of significant business opportunity for him.

35. The Plaintiff says that it took them more than six (6) hours to get the Plaintiff's vehicle to restart.
36. The Plaintiff says that when the mechanic with the help of an auto electrician restarted the car, they demanded that the Defendant's representative pay the service fee of the mechanic.
37. The Plaintiff says that the Defendant's representative then promised the mechanic to pay the money later, but the mechanics refused as they accused the Defendant's representative of failing to pay them their service fees when similar situations occurred in the past and they came to fix the problems.
38. The Plaintiff says he was compelled to, out of pocket, make the payment himself, totalling an amount of five hundred Ghana Cedis (**Gh¢ 500.00**). The Defendant's representative later sent the money *via* Mobile Money Transfer (**momo**) to the Plaintiff, in an apparent acknowledgement of the problem.
39. The Plaintiff says that because of the delay occasioned by the damage to his car, he missed a business meeting he had scheduled for 3:00 p.m that afternoon and rather arrived in Accra at about 10 pm.
40. The Plaintiff says that by missing this business meeting, he suffered damage to his reputation as a reliable business partner and lost a business opportunity worth **Two Million, Five Hundred United States of America Dollars (US\$ 2,500,000.00)**.

41. The Plaintiff says that the Defendant with their knowledge of what a petrol mixed with water can cause, at the very least knew or ought to have known that the selling of contaminated fuel to the Plaintiff will disrupt his journey, unreasonably cause delay to his travel and put his life in danger and occasion him serious losses.
42. The Plaintiff says that on their way back to Accra, his Car was still showing signs of hesitation but they managed to get to Accra.
43. The Plaintiff says that the conduct of the Defendant has thrown the Plaintiff's once very reliable car into recurrent problems as water has entered the engine and other vital parts of the car.
44. The Plaintiff says that the car hesitates and dithers to start and sputters upon ignition. The car is now very sluggish and significantly less responsive to acceleration. It also jolts when driving on the road, and the engine intermittently goes off by itself.
45. The plaintiff says that on one occasion his engine ceased whilst his car was in motion and descending the "Kosoa" overpass. The failure of his engine on the Kasoa overpass exposed the Plaintiff and other road users to a serious risk of an accident.

46. The Plaintiff asseverates that the '*epileptic*' behaviour of the car because of the Defendant's conduct has caused and continues to cause Plaintiff anxiety and distress attacks whenever he needs to drive the vehicle.

**47. The Plaintiff says that his car has become unsafe and unreliable to drive and as such he has had to resort to the use of alternative vehicle.**

**48. The Plaintiff has suffered business and social embarrassment because of his inability to use his vehicle properly due to the conduct of the Defendant.**

**49. Plaintiff has had to call for help to push the car around to safety several times along the busy roads, thus endangering the plaintiff's life and subjecting him to ridicule, scorn, and disdain.**

50. The Plaintiff says that the Defendant failed to supply him with the required standard of fuel hence breaching the contract of sale between the Defendant and the Plaintiff.

**51. The fuel sold by the Defendant to the Plaintiff was obviously and clearly *not fit for purpose*.**

52. The Plaintiff will also say that the Defendant was negligent in supplying the Plaintiff with contaminated fuel. The Defendant's negligent conduct breached the duty of care owed to the Plaintiff and consequently caused damage/loss to the Plaintiff.

### **PARTICULARS OF NEGLIGENCE**

- a. The Defendant had a duty to ensure that the fuel they sold to the Plaintiff and the general public was safe for vehicles and not contaminated with water.

- b. The Defendant had a duty to ensure that the fuel was properly stored in watertight equipment to prevent water contamination but failed to do so and unreasonably sold the contaminated fuel to Plaintiff without care.
- c. The Defendant had a duty to regularly check their fuel pumps and tanks to make sure that no water or other contaminants could get into customers' cars.
- d. The Defendant knew that it had a recurring problem of water ingress into the underground tank but unreasonably failed to resolve it.
- e. The Defendant despite knowing of the recurrence of the ingress of water into the underground storage tank failed to check for water contamination after rainfall but proceeded to sell the contaminated fuel to the Plaintiff and other customers.
- f. The Defendant filled the Plaintiff's car with fuel containing large amounts of water.
- g. The Defendant failed to put in place an effective mechanism to prevent its fuel from contamination before selling the same to Plaintiff and other customers.
- h. The Defendant failed to observe its duty to ensure that only the right quality and quantity of fuel is sold to the Plaintiff and the public.
- i. The Defendant's contaminated fuel caused damage to the Plaintiff's vehicle.
- j. The Plaintiff has suffered losses as a result of the Defendant's conduct.

**53. The Plaintiff says that he has suffered loss and damage, including permanent damage to his car's engine, major inconvenience, damage to his reputation and other special damage.**

**PARTICULARS OF SPECIAL DAMAGE**

a. The Plaintiff has suffered reputational damage and loss of business opportunity because of a missed business meeting with some strategic investors to the tune of USD 2.5 million.

54. The Plaintiff says that he has lost the use of his car and continues to suffer the loss of use of same due to the Defendant's negligence and desire to put profit ahead of Plaintiff's life and property.

**55. The Plaintiff says that the Defendant will not remedy the breach occasioned the Plaintiff and will continue to treat the Plaintiff and the consuming public with a lack of due care and disregard for human lives unless the Honourable Court punishes the Defendant severely to send a strong signal to the Defendant that its conduct was unacceptable and objectionable.**

56. The Plaintiff says that the Defendant will not discharge it's liabilities to the Plaintiff unless compelled by the Honourable court to so do.

**WHEREFORE THE PLAINTIFF CLAIMS AGAINST THE DEFENDANT AS FOLLOWS:**

- I. A declaration that the Defendant endangered the lives of the Plaintiff and his friend John Michael Appiah-Acheampong by fueling the 2017 Ford Explorer Vehicle with registration number CR 8509 19 they were travelling in with contaminated fuel.
- II. A declaration that the Defendant placed profit ahead of human lives by selling contaminated fuel to the Plaintiff and the General Public.
- III. A declaration that the Defendant owed the Plaintiff a duty of care to sell uncontaminated fuel to the Plaintiff.
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- V. A declaration that the Defendant has also breached the contract of sale between the Defendant and the Plaintiff.
- VI. A declaration that the Defendant's breach of duty of care and or contract of sale resulted in damage to the Plaintiff's 2017 Ford Explorer with registration number CR 8509 19.
- VII. An order directing the Defendant to replace the Plaintiff's 2017 Ford Explorer with a similar vehicle and of the same specifications.
- VIII. Special damages of US\$2.5million for Plaintiff's loss of business opportunity occasioned by the Defendant's Negligence and or breach of contract.
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- X. Damages for breach of contract.



- XI. Punitive damages.
- XII. General damages.
- XIII. Cost including legal costs.
- XIV. Any other relief(s) that the Court may deem fit.

**DATED AT ABLEWOR LAW CHAMBERS, BLAGOGEE, BLACKSWORD & Co**  
**No.3 PAWPAW STREET, EAST LEGON – ACCRA THIS 8<sup>TH</sup> DAY OF SEPTEMBER, 2022**



**CHARLES DELALI BLAGOGEE**  
**LN/ GAR/ 00008/22**  
**SOLICITOR FOR PLAINTIFF**

**THE REGISTRAR**  
**HIGH COURT**  
**COMMERCIAL DIVISION**  
**ACCRA**

**AND FOR SERVICE ON THE DEFENDANT AND OR IT'S SOLICITOR.**