



REPUBLIC OF GHANA

# WRIT OF SUMMONS

(Order 2 rule 3(1))

CM/BDC/0655/2018

WRIT ISSUED FROM ..... 27 - 9 - 18 ..... 20.....18 SUIT NO. ....

## IN THE HIGH COURT OF JUSTICE

COMMERCIAL DIVISION

ACCRA-A.D. 2018

BETWEEN

**MENZGOLD GHANA LIMITED**  
Opposite Nogahil Hotel  
Accra

3000000139

**Plaintiff:**

1. **BANK OF GHANA** 3000001219  
One Thorpe Road, High Street, Accra

**Defendant:**

2. **SECURITY AND EXCHANGE COMMISSION** 3000002746

To No. 30 3<sup>rd</sup> Circular Road, Cantonment, Accra

(Plaintiff will direct service)

AN ACTION having been commenced against you by the issue of this Writ by the above-named plaintiff **MENZGOLD GHANA LIMITED**

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. **BANK OF GHANA** 2. **SECURITY AND EXCHANGE COMMISSION**

AND TAKE NOTICE that in default of your so doing, judgment may be given in your absence without further notice to you 1. **BANK OF GHANA**

2. **SECURITY AND EXCHANGE COMMISSION**

Dated this 27<sup>th</sup> day of

September

20...18

Chief Justice of Ghana

**SOPHIA A.B. AKUFFO (MS)**

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 lawyer at Form 5 at the Registry of the Court of issue of the writ at 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 defendant (not P.O. Box number).

**STATEMENT OF CLAIM**  
**SEE ATTACHED**

The Plaintiff's Claim is for against the 1<sup>st</sup> and 2<sup>nd</sup> Defendants per its Writ of Summons as follows:

**DATED AT KWAME AKUFFO & CO. UNLIMITED, ACCRA, THIS 26<sup>TH</sup> DAY OF SEPTEMBER, 2018.**

  
**Kwame Bofo Akuffo**  
Kwame Akuffo & Co. Unlimited  
Lawyer for the Plaintiff  
License Number. GAR 15181/18

**This Writ was issued by** Kwame Akuffo & Co. Unlimited  
Capital Place Block 'B'  
**whose address for service is** 11 Patrice Lumumba Road  
Airport Residential Area, Accra

**Agent for**

**Lawyer for the plaintiff** Kwame Bofo Akuffo, 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 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).



- a. A declaration that the Plaintiff's business does not fall within the present legislated scope of the Banks and Specialized Deposit - Taking Institutions Act 2016 (Act 930);
- b. A declaration that Plaintiff's business activities does not fall within the present legislated scope of the Security Industry Act, 2016 (Act 929);
- c. A declaration that the 1<sup>st</sup> Defendant's Notices No. BG/GOV/SEC/2018/12 and BG/GOV/SEC/2017/24 dated 6<sup>th</sup> August 2018 and 28<sup>th</sup> November, 2017 respectively have hurt the business reputation of the Plaintiff;
- d. A declaration that the 2<sup>nd</sup> Defendant's Notice No. SEC/PN/002/09/2017 dated 22<sup>nd</sup> September 2017 has harmed the business reputation of the Plaintiff;
- e. A declaration that the 1<sup>st</sup> Defendant's Notices No. BG/GOV/SEC/2018/12 and BG/GOV/SEC/2017/24 dated 6<sup>th</sup> August 2018 and 28<sup>th</sup> November, 2017 respectively are an abuse of the Defendant's discretionary powers contrary to Article 23 and Article 296 of the 1992 Constitution;
- f. A declaration that the 2<sup>nd</sup> Defendant's Notice No. SEC/PN/002/09/2017 dated 22<sup>nd</sup> September 2017 is an abuse of the Defendant's discretionary powers contrary to Article 23 and Article 296 of the 1992 Constitution;
- g. A declaration that the directives contained in the letter of 7<sup>th</sup> September 2018 was an abuse of the 2<sup>nd</sup> Defendant's discretion as same was arbitrary, capricious and contrary to Article 23 and Article 296 of the 1992 Constitution;
- h. An order setting aside the directives contained in the 2<sup>nd</sup> Defendant's letter dated 7<sup>th</sup> September 2018;
- i. An order of the Court directed at the 1<sup>st</sup> and 2<sup>nd</sup> Defendants to publish an unqualified retraction and an apology with the same prominence with respect to the Notices dated 6<sup>th</sup> August 2018 and 22<sup>nd</sup> September 2017 respectively;
- j. An order of Perpetual Injunction to restrain the 1<sup>st</sup> and 2<sup>nd</sup> Defendants, its officers, servants and agents from interfering with the Plaintiff's business activities or further acts of disobedience and non-compliance with law by publishing any such derogatory Notices;
- k. Exemplary and Aggravated Damages for the harm caused to the Plaintiff's business reputation;
- l. An order specifying a time limit within which the judgment of this Court should be complied with;
- m. General Damages; and
- n. Cost inclusive of the Plaintiff's Legal Fees.

IN THE SUPERIOR COURT OF JUDICATURE  
IN THE HIGH COURT OF JUSTICE  
COMMERCIAL DIVISION  
ACCRA - A.D. 2018

27-9-18  
12:12  
Register  
COMMERCIAL DIVISION OF THE  
HIGH COURT, ACCRA

SUIT NO.:

**MENZGOLD GHANA LIMITED**  
Opposite Nogahil Hotel  
Accra

... Plaintiff

Vrs

**BANK OF GHANA**  
One Thorpe Road  
High Street  
Accra

... 1<sup>st</sup> Defendant

**SECURITIES AND EXCHANGE COMMISSION .. 2<sup>nd</sup> Defendant**  
No. 30 3<sup>rd</sup> Circular Road, Cantonment  
Accra

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STATEMENT OF CLAIM

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1. The Plaintiff is a Limited Liability Company incorporated under the Laws of the Republic of Ghana with its registered business objectives being engaging in gold and diamond mining, dealers in the purchase and sale of gold and other precious minerals and consultancy. The Plaintiff has been duly licensed by the Minerals and Mining Commission of Ghana to engage in its business objectives.
2. The 1<sup>st</sup> Defendant is the Central Bank of the Republic of Ghana established by the 1992 Constitution and responsible for the regulation, supervision and direction of banking and credit system and ensure smooth operation of the financial sector in Ghana while the 2<sup>nd</sup> Defendant is a body corporate established and operating under the Security Industry Act, 2016 (Act 929) to regulate and promote the growth of the securities industry in Ghana.
3. The Plaintiff says that the 2<sup>nd</sup> Defendant has a governing body the membership of which includes a representative of the 1<sup>st</sup> Defendant.



4. The Plaintiff says that by recent publications titled "Deposit-Taking Activity by MenzGold Ghana Company Limited" (collectively **the Notices**), numbered BG/GOV/SEC/2017/24 and BG/GOV/SEC/2018/12, dated 28<sup>th</sup> November, 2017 and 6<sup>th</sup> August 2018 respectively, the 1<sup>st</sup> Defendant issued the Notices warning the public against any dealings with the Plaintiff, adding that *"anyone who transacts any of the above-mentioned business with Menzgold Ghana Company Limited, does so at his/her own risk and Bank of Ghana will not be liable to such clients and depositors in the event of loss"*.
5. The Plaintiff says further that the 2<sup>nd</sup> Defendant also by a Notice entitled "Notice by the Securities and Exchange Commission on Gold Trading on the Capital Market". Notice No. SEC/PN/002/09/2017 and dated 22<sup>nd</sup> September 2017, (the "SEC Notice") the 2<sup>nd</sup> Defendant informed the general public that *"MENZGOLD GHANA LIMITED has neither been licensed nor their adverts sanctioned by the Securities and Exchange Commission (SEC) to carry out any activity in the Capital Market as mandated by Section 3(c) of the Securities Industry Act, 2016 (Act 929) and therefore MENZGOLD is not a SEC regulated entity"*. This notice was curiously issued at a time that the 1<sup>st</sup> Defendant was also claiming that the Plaintiff's activities were Deposit-Taking.
6. The Plaintiff says that it has by several correspondence through its Lawyers made it emphatically clear to the 1<sup>st</sup> and 2<sup>nd</sup> Defendants that it does not accept deposits from customers or carry on Deposit-Taking business in Ghana and neither does it trade in Securities and that the Plaintiff's activities, which are restricted among others, allows its customers to sell gold on its Vault Market. The Plaintiff avers that this activity is neither within the present legislated scope of the Banks and Specialized Deposit-Taking Institutions, Act, 2016, Act 930 nor within the present legislated scope of the Security Industry Act, 2016 (Act 929).
7. The Plaintiff says that further to the publication of the categorical Notices by the 1<sup>st</sup> Defendant, the 1<sup>st</sup> Defendant was unable to exercise any powers under Section 20 of Act 930 to shut down the Plaintiff's business as it will have been entitled to do in the situation where it has sufficient reason to believe that an entity is involved in unauthorized Deposit-Taking business and that under the circumstances the Plaintiff avers that the 1<sup>st</sup> Defendant did not have sufficient reason to believe in the Notices that it put out to the Plaintiff's detriment.
8. The Plaintiff says that in the face of the categorical Notices coupled with the absence of sufficient reason that the Plaintiff is engaged in Deposit - Taking and despite the exchange of correspondence between it and the 1<sup>st</sup> Defendant in which the Plaintiff outlined its operations, the 1<sup>st</sup> Defendant in a grave abuse of power and misapplication of its regulatory control and influence, has been leaning heavily on the Plaintiff's Bankers



especially Zenith Bank, persuading them not to conduct business with the Plaintiff and to that end Zenith Bank has since served notice of its intention to stop doing business with the Plaintiff.

9. The Plaintiff says that by letter dated the 22<sup>nd</sup> of August, 2018 the 2<sup>nd</sup> Defendant gave notice of its intention to visit the Plaintiff's premises to ascertain the nature of its work and in deed did visit the premises on the 23<sup>rd</sup> of August, 2018 and engaged in undocumented discussions with the Plaintiff's management.
10. The 2<sup>nd</sup> Defendant subsequently requested of the Plaintiff by way of letter dated 27<sup>th</sup> of August 2018 for various pieces of information about the Plaintiff's business and by letter dated 29<sup>th</sup> August 2018, its Lawyers respectfully wrote to the 2<sup>nd</sup> Defendant and asked for additional time to comply which the 2<sup>nd</sup> Defendant did acknowledge receipt of without dismissing the plea for an extension of time to comply thereby granting same.
11. The Plaintiff says that at all times material the Defendants had referred the 'alleged conduct' of the Plaintiff's business to the Economic and Organized Crimes Office (EOCO) for investigations and that as at the date of the filing of this Writ, EOCO is still conducting its investigations.
12. The Plaintiff says that without any warning whatsoever and without regard to the impact of the SEC Notice and the financial wellbeing of the Plaintiff's Customers, the 2<sup>nd</sup> Defendant without any legal basis whatsoever proceeded to direct the Plaintiff to shut down its entire operations by way of letter dated the 7<sup>th</sup> September 2018, at a time when the 2<sup>nd</sup> Defendant was under an obligation at law to wait for the Plaintiff's response.
13. Plaintiff says that the 2<sup>nd</sup> Defendant based its reasons for the direction on the grounds as stated in paragraphs 3, 4 and 5 of its letter dated the 7<sup>th</sup> of September 2018 as follows:

Paragraph 3

*"The interactions with Mr. Offei and Rev. Derek Akubia confirmed to SEC the view that the aspect of Menzgold's business which involves the purchase/deposit of gold collectibles from the public and contracts issued with guaranteed returns with Clients is a capital markets activity (issuance of gold-backed depository notes to the public) under Act 929 without a valid licence issued by SEC contrary to section 109 of 929 with consequences under section 206 (1) of the same Act".*



Paragraph 4

*"Subsequent to the visit by the SEC officials, a request for specific detailed information was made and MenzGold has through its lawyers agreed to provide the necessary information requested by the SEC within fourteen days. The provision of the information however does not make that aspect of MenzGold operations any less of an illegality under Act 929 as well as a threat to unsuspecting and uninformed investors".*

Paragraph 5

*"According the SEC hereby directs MenzGold Company Limited to shut down immediately the business of trade in gold collectibles with guaranteed returns to clients which constitutes, in essence, dealing in securities with neither the necessary licenses nor disclosures otherwise by the SEC. No new contract should be created and all advertising of the investment business halted with immediate effect."*

14. The Plaintiff says that at all times material the 2<sup>nd</sup> Defendant's letter of 7<sup>th</sup> September 2018 made reference to a general violation of Section 109 of Act 929 without stating the specific license under Section 109 which the Plaintiff had refused to apply for and obtain and as at the date of this Writ the Plaintiff is not in the know as to the specific violation of Section 109 that it has breached.
15. The Plaintiff says that the 2<sup>nd</sup> Defendant on the basis of undocumented interactions and without regard to documentation it had requested, but which it impliedly held was unnecessary, came to the conclusion that the Plaintiff was engaged in the *"issuance of gold-backed depository notes"* without license and proceeded to direct that the Plaintiff's business be shut down. Even though the letter was headed *"NOTICE TO SUSPEND TRADING"*.
16. The Plaintiff says that it is significant to know that the 2<sup>nd</sup> Defendant did not describe its business module which has been ongoing for more than 3 years as an illegality per se but one which required licensing under Section 109 of Act 929.
17. The Plaintiff says that shocked by the arbitrary conduct of the 2<sup>nd</sup> Defendant it wrote to it asking for a meeting to resolve this matter amicably and that to its dismay and consternation it received a response dated 17<sup>th</sup> September 2018 from the 2<sup>nd</sup> Defendant in which the 2<sup>nd</sup> Defendant specifically stated that a condition precedent to meeting with the Plaintiff was as follows:



*"The information requested shall among other things enable us make certain determinations about your business and potentially enable us guide your client on how to regularize its operations as applicable.*

*Our information request to you was made pursuant to Section 24 of Act 929 and the consequences therein are obvious.*

*The Commission hereby advises your client to comply with our request which it has failed to comply with, even according to your own timelines stated in paragraph 4 of your letter to us dated the 29<sup>th</sup> day of August, 2018 and referenced KBA458/18 on Tuesday the 18<sup>th</sup> September, so that the meeting can take place on Thursday the 20<sup>th</sup> September, 2018".*

18. The Plaintiff says that the receipt of the 2<sup>nd</sup> Defendant's letter of 17<sup>th</sup> September 2018 clearly showed an admission on the part of the latter that its alleged finding that the Plaintiff was involved in the *"issuance of gold-backed depository notes"* was without any basis whatsoever and that 2<sup>nd</sup> Defendant admits that it lacks an understanding of the Plaintiff's business and that it needs further information to enable it make determinations.
19. The Plaintiff avers that in the circumstances, the decision to shut down its business was premature, hasty, arbitrary and clearly intended to affect the accrued rights of Plaintiff's business and its customers in a prejudicial manner .
20. The Plaintiff also says that in its letter of 17<sup>th</sup> September 2018 the 2<sup>nd</sup> Defendant further referred to the request for information as one which was made pursuant to Section 24 of Act 929 while reminding the Plaintiff of the consequences of the failure to provide the information It is significant to note that the production or non-production of information per Section 24 does not envisage a shut- down of an entity's business.
21. The Plaintiff says that under the circumstance the statutory basis of the *"shut-down enterprise"* of the Plaintiff's business by the 2<sup>nd</sup> Defendant is completely non-existent.
22. The Plaintiff says that its economic venture has been on-going for a period of almost six (6) years to the knowledge of the general public and the 1<sup>st</sup> and 2<sup>nd</sup> Defendants, and that in the said period a lot of people have accrued rights and that same cannot be interfered with in such an arbitrary, capricious or biased manner either by resentment, prejudice or personal dislike in the issue of directives and Notices as same is contrary to the 1992 Constitution.
23. The Plaintiff says that in the face of the accrued rights, the Defendants cannot trample upon same without regard for due process and that this disregard for due process is made worse by the request for information



after a decision has been taken when that same information was deemed irrelevant at the material time when the decision to shut-down Plaintiff's business was being taken.

24. The Plaintiff says that as at the date of this Writ it has not been informed in specific manner as to the licence that it is supposed to take out and denies the 2<sup>nd</sup> Defendant's "fluctuating" position that it is involved in the *"issuance of gold-backed depository notes"*.
25. The Plaintiff says that its business is basically a contract between two parties to sell gold to third parties which does not fall within the applicable remit of the 2<sup>nd</sup> Defendant as the purchase and sale of gold is one covered by the Minerals and Mining Act, 2006 (Act 703) and thus the Defendants are engaged in Regulatory overreach.
26. The Plaintiff says that a careful review of its business operations which is basically the purchase and sale of gold collectibles will show that the Notices issued by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants on 6<sup>th</sup> August 2018 and 22<sup>nd</sup> September 2017 respectively are malicious, mired in complete bad faith and above all without any basis in Law as same reflects conduct intended to stretch the language of existing Legislation in order to cover its operations.
27. The Plaintiff says that the Defendants have adopted an intimidating stance to undermine the business of the Plaintiff when the Plaintiff is not subject to the regulatory ambit of the Defendants and that as a constitutional body, the Defendants have a duty to foster an enabling environment for a pronounced role of the private sector in the Ghanaian economy.
28. The Plaintiff says that for a protracted length of time it was the 1<sup>st</sup> Defendant which assiduously sent out Notices to the general public and sought to claim Jurisdiction over its affairs until the 2<sup>nd</sup> Defendant also stepped in leaving it with the impression that the Regulators were bent on finding fault and undermining its business.
29. The Plaintiff says that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants on the same set of facts claim that its business is involved in deposit-taking and trading gold-backed notes respectively and that the two claims cannot co-exist at the same time.
30. The Plaintiff says that to add to the confusion the Deputy Director of the 2<sup>nd</sup> Defendant granted an interview to "Joy News Prime" on the 25<sup>th</sup> September 2018 and clearly left the Plaintiff with the impression that the 2<sup>nd</sup> Defendant's position in the letter of 7<sup>th</sup> September 2018, that it was issuing gold backed depository notes was not one that the 2<sup>nd</sup> Defendant was minded to defend especially as he gave fluctuating responses on the status of the Plaintiff's business.

31. The Plaintiff says that the Defendants threaten to continue with its illegality unless restrained by an order of this Court.

**WHEREFORE**, the Plaintiff claims against the 1<sup>st</sup> and 2<sup>nd</sup> Defendants per its Writ of Summons as follows:

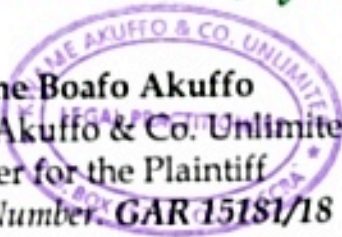
- a. A Declaration that the Plaintiff's business does not fall within the present legislated scope of the Banks and Specialized Deposit - Taking Institutions Act 2016 (Act 930).
- b. A Declaration that Plaintiff's business activities does not fall within the present legislated scope of the Security Industry Act, 2016 (Act 929);
- c. A Declaration that the 1<sup>st</sup> Defendant's Notices No. BG/GOV/SEC/2018/12 and BG/GOV/SEC/2017/24 dated 6<sup>th</sup> August 2018 and 28<sup>th</sup> November, 2017 respectively have hurt the business reputation of the Plaintiff;
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- i. An order of the Court directed at the 1<sup>st</sup> and 2<sup>nd</sup> Defendants to publish an unqualified retraction and an apology with the same



prominence with respect to the Notices dated 6<sup>th</sup> August 2018 and 22<sup>nd</sup> September 2017 respectively;

- j. An order of Perpetual Injunction to restrain the 1<sup>st</sup> and 2<sup>nd</sup> Defendants, its officers, servants and agents from interfering with the Plaintiff's business activities or further acts of disobedience and non-compliance with law by publishing any such derogatory Notices;
- k. Exemplary and Aggravated Damages for the harm caused to the Plaintiff's business reputation;
- l. An order specifying a time limit within which the judgment of this Court should be complied with;
- m. General Damages; and
- n. Cost inclusive of the Plaintiff's Legal Fees.

DATED AT KWAME AKUFFO & CO. UNLIMITED, ACCRA, THIS 26<sup>TH</sup> DAY  
OF SEPTEMBER, 2018.



**Kwame Boafo Akuffo**  
Kwame Akuffo & Co. Unlimited  
Lawyer for the Plaintiff  
License Number: **GAR 15181/18**

The Registrar,  
High Court  
Commercial Division  
Accra

AND TO THE ABOVE-NAMED DEFENDANTS