

**IN THE CIRCUIT COURT '10 OF GHANA, ACCRA, HELD THIS**  
**WEDNESDAY THE 4<sup>TH</sup> DAY OF JANUARY, 2023 BEFORE HER HONOUR**  
**EVELYN E. ASAMOAH (MRS)**

**CASE \_\_\_\_\_ NO.**  
**C1/15/2022**

**GODFRED ODOI LARYEA**

**VRS**

**NII MARKWEI KORLEY ADJOR & 1 ANOR**

**MR. SAMUEL AKUFFO FOR THE PLAINTIFF APPLICANT**

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**RULING**

The plaintiff sued the Defendants, jointly and severally, for an order for refund of the sum of GH¢32,280.00 being monies due from the defendant's to the plaintiff as part-payment of the plot of the land at Ashomgman together with cost of building materials and work on the land. The defendant on 17<sup>th</sup> December, 2022 filed an application praying for judgment on admission against the defendant.

Order 23 rule 6(2) of the High Court Civil procedure Rule, C.I47, 2004 states:

*"where an admission of the truth of a facts or the authenticity of a document is made by a party or is made or deemed to be made by party in response to a request to admit, any party may apply by motion to the court*

*or to the Judge for such order as the party may be entitled to on the admission without waiting for the determination of any question between the parties and the court or the Judge may make such order as is just”.*

The applicant in his affidavit in support of the motion indicated that the “Defendant/Respondent in paragraph 7 and 8 of the statement of defence have admitted to receiving from him the total sum of GH¢20,000.00 as set out in paragraph 7 and 8 of statement of claim”.

The Defendant stated that the plaintiff is not entitled to his claim. He admitted paragraph 2, 3, 4, 7 and 8 of the statement of defence.

The plaintiff relies on two main paragraphs; paragraph 7 and 8 – The plaintiff in the said paragraph indicted that he paid some monies to one Godwin that he also paid money to an Elder of the family in the presence and at the residence of the 2<sup>nd</sup> Defendant.

Paragraph 7 states: “Plaintiff further say that the purchase price for the said land was GH¢40,000.00 and he paid GH¢10,000.00 to Godwin on 1<sup>st</sup> July, 2019.

Paragraph 8 states: “Plaintiff avers that on 19<sup>th</sup> July, 2019 he paid an additional sum of GH¢10,000.00 to an Elder of the family namely John Marteye (Deceased) at a meeting in the presence and at the residence of the 2<sup>nd</sup> Defendant with other Elders of 1<sup>st</sup> Defendant family present”.

The Defendant in the opinion of the court did not state categorically that monies were given to them personally in respect of the land.

Mr. S. Kwame Tetteh in his book – Civil Procedure – A practical approach page 324 stated:

*“...The rule applies only where the admission clears all the controversy, leaving no other important issues. Where serious question is left to be argued or matter cannot be conveniently tried on a motor, it would be inconvenient to apply the rules (Kofi III vs Akrafi II [1992 – 1993] GBR 10 12 S.C). The rule may be involved where the matter is clear and unequivocal would however not make judgment automatic; the court will enter judgment only where it is just and as noted, there are no pending issues that go to the root of the matter (Pomaa vs Fosuhene [1987 – 1988] 1 GLR 244 SC)”*

As indicated, the plaintiff stated that the monies were paid to one Godwin and not the Defendant’s. An Elder of the family expressly admit that they received monies in respect of the land. It’s the view of the court that there are triable issues which cannot be determined on this application. In the circumstance, application dismissed. Cost of GH¢700.00 against the Plaintiff/Applicant.

**H/H EVELYN E. ASAMOAH (MRS)  
CIRCUIT COURT JUDGE**