IN THE CIRCUIT COURT ONE (1) ACCRA, HELD ON TUESDAY, 4TH DAY OF JULY, 2023, BEFORE HER HONOUR AFIA OWUSUAA APPIAH (MRS).

SUIT NO.C2/10/2023

FRANCIS MICHAEL AHIANKUI **PLAINTIFF**
GPS ADDRESSS GW-1107-0650
ACCRA

VRS

BENJAMIN KWABENA BOAMAH
UNUMBERED HOUSE **DEFENDANT**
ACCRA

JUDGEMENT

The Plaintiff instituted this action against the Defendant on 16th August 2022 praying the court for the following reliefs

a. Recovery of the cedi equivalent of the sum of USS20,436.96 (Twenty Thousand Four Hundred and Thirty Six United States of American Dollars Ninety Six Cents) being the principal sum under the Investment.

b. Interest on the aforementioned sum from 6th December 2019 till date of final payment.

c. Cost of the suit as well as Counsel's fees which is assessed at 10% (Ten) percent of the claim.

Summary of Plaintiff's case per the statement of claim is that sometime in September 2019, Defendant introduced himself to him as a person engaged in the business of trading in digital currency. He avers that Defendant offered an investment plan and persuaded him to enroll in December 2019 and invest a total amount of US$20,436.96 into Defendant's digital platform. According to Plaintiff, interest was to accrue on monthly basis and to be shared in the ratio of 50:50 basis. He averred further that the interest was usually rolled over unless contrary instruction was issued and he was at liberty to withdraw

the investment at anytime he desired. He stated that in December 2021, he notified Defendant of his intention not to roll over his interest and principal again but withdraw same on 1st January 2022 to attend to an urgent matter. On 26th December, 2021, Defendant informed him he had accrued losses on the investment and needed two weeks to retrieve Plaintiff's funds for him. Defendant on 29th of March 2022 notified him that he had been able to retrieve 98% of Plaintiff's money and subsequently confessed to him that he had retrieved all the money but used same to pay his creditors. Defendant had till date failed to refund his money to him despite several demands he has made on him. Defendant upon receipt of a demand letter from Plaintiff's counsel intimated through his lawyer to come up with a payment plan but later paid only $1000. Plaintiff contends that as at 1st December 2021, his investment plus the interest accrued stood at US$63,201.53. Plaintiff therefore prays the court per his reliefs supra.

Defendant entered an Appearance and subsequently filed his Statement of Defence on 12th October 2022. He stated that he had been in the digital trading enterprise since late 2017 and had chalked successes earning him an enviable reputation as a shrewd trader of digital currency. As a result of which many people requested him to trade on their behalf. He stated that it was Plaintiff who rather insisted and persuaded him to trade on his behalf. Defendant contends that he made Plaintiff aware and understand that trading of digital currency was a high risk venture and that there were no guarantees to high returns on investment and they could get nothing before Plaintiff's decision to trade. Defendant stated that he encountered difficulties on the trading platforms due to external shocks and this led to Plaintiff withdrawing $4,000. He stated that the digital currency market took a nose dive and he incurred losses on Plaintiff's investment According to Defendant one of the foreseeable consequences of trading in didgital currency is a possible loss of investments and earnings and Plaintiff having consented to the risky nature of the digital trading market had impliedly committed to absolve the Defendant

of any liability and loses arising from the trade. Defendant averred that the proposal made by his lawyer was just an act of magnanimity.

ISSUES TO BE DETERMINED

At the close of pleadings, the following issues were adopted and set down as issues to be determined by the court during application for direction

1. Whether or not the Plaintiff invested the sum of USS20,436.96 into the Defendant's digital trading platform?
2. Whether or not interest on the sum of US$20,436.96 invested in the Defendant's digital trading platform was to accrue on a monthly basis?
3. Whether or not the Defendant made the Plaintiff understand the high-risk nature of trading in digital currency?
4. Whether or not the Defendant confessed to the Plaintiff that he had retrieved 98% of the Plaintiff's investment and interest accrued? "

It is settled law that in civil cases, he who asserts must prove. The standard of proof required is on the preponderance of probabilities only. See **Sections 11(4) and (12)** of the Evidence Act, 1975(NRCD 323). In the case of In **re Wa Na; Issah Bukari** [2013-2014] 2 SCGLR 1590, the Supreme Court held in its holding 2 of the headnote that:

"The Evidence Act, 1975(NRCD 323), has prescribed the applicable procedure in every proceedings including enquiries, investigations and hearings etc thus a person was obliged under section 11(1) of NRCD 323 to introduce sufficient evidence to avoid a ruling against him on an issue… The burden was not discharged by merely entering the witness box and repeating claims or averments, as by leading admissible and credible evidence from which the facts asserted by them could be properly and safely inferred." See also Memuna Moudy v. Antwi [2003-2004] 2 SCGLR 967 at 774-975.

Also, in the case of **Sarpong (Decd) (Substituted by) Koduah v. Jantuah** [2017-2020] 1 SCGLR 736 held in holding 4 as follows;

"(4) The principle enunciated in the Majolagbe v. Larbi [1959] GLR 190, did not mean a party should not or could not repeat what had been pleaded in evidence. What that principle mean was that, that party should lead such evidence as would constitute proof in law. Since a party was required to stick to his pleadings when giving evidence, there was nothing wrong where that party repeated on oath what had been pleaded; the only consideration of the court was to ascertain whether what the party had said on oath was sufficient to discharge the burden of persuasion that laid on him."

In the instant case, the plaintiff who brought the defendant to court must lead cogent and admissible evidence to prove his case failing which the case will be dismissed.

Plaintiff testified relying on his witness statement filed on 13/1/2023 same of which has been adopted by the court as his evidence in chief. He tendered in evidence the following exhibits;

Exhibit A- A picture with the details of Benin Kwabena Boamah's digital trading platform.

Exhibit B - Copies of the receipt showing deposits made into Benin Kwabena Boamah's Digital trading platform.

Exhibti C - Whatsapp conversation between Benin Kwabena Boamah and Francis Michael Ahiankui on the withdrawal of the investment.

Exhibit D - Whatsapp conversation between Benin Kwabena Boamah and Francis Michael Ahiankui

Exhibit E - Whatsapp conversations between Benin Kwabena Boamah and Francis Michael Ahiankui showing percentages of the investments Benin Kwabena Boamah had retrieved.

Exhibit F - Whatsapp conversation between Francis Michael Ahiankui and lawyer for Benin Kwabena Boamah.

Exhibit G - A copy of the demand letter dated 31st May 2022.

Defendant testified solely and also tendered in evidence extracted whatsapp conversation between parties as exhibit 1.

Issue 1 - Whether or not the Plaintiff invested the sum of USS20,436.96 into the Defendant's digital trading platform? & Whether or not interest on the sum of US$20,436.96 invested in the Defendant's digital trading platform was to accrue on a monthly basis?

For avoidance of repetition of evidence and case law, permit me to discuss issues one and two together.

Plaintiff's testimony before the court is that in September 2019, he was introduced to Defendant as a person engaged in the digital trading currency and Defendant confirmed trading on the digital platform under the details Binance Digital trading platform. See exhibit A. Plaintiff stated that Defendant persuaded him to enroll on his platform and he did so and invested to the tune of &20,436.96 (twenty four thousand and thirty six United States of American Dollars ninety six cents on Defendant's platform. Exhibit B series being receipts of the said deposits made to Defendant's platform. Plaintiff stated further that it was a term under the investment that interest was to accrue on monthly basis. This evidence of Plaintiff was not challenged and same was admitted by the Defendant when he was subjected to cross-examination by counsel for Plaintiff as below

Q: From the testimony at paragraph 12 of your witness statement it is not in dispute that plaintiff invested the sum of USD20,436.96 at a monthly rate and not weekly not so.

A: That is correct

Counsel for Plaintiff in his written address correctly submits the position of the law on admitted facts of a party by the opposing party. In the case of **Re Asere Stool; Kotei v. Asere Stool** [1961] GLR SC 493, the Supreme Court held that:

"Where a party has admitted a fact advantageous to the cause of a party, the party does not need any better evidence to establish that fact than relying on such admission which is an example of estoppel by conduct. It is a rule whereby a party is precluded from denying the existence of some state of facts, which he has formally asserted. This type of rule is a salutary rule of evidence based on common sense and expediency"

Defendant having admitted that plaintiff invested the sum of USD20,436.96, the court finds that Plaintiff invested the said amount into the digital platform of Defendant and interest thereon was to accrue on monthly basis.

Issue iii - Whether or not the Defendant made the Plaintiff understand the high-risk nature of trading in digital currency?

It is the case of the Defendant that digital currency trade is a high risk investment which he made known to Plaintiff prior to his investment. In his evidence on oath, Defendant testified that before he "signed on" Plaintiff after the latter's persistence and determination to trade with him, he took him through some basic procedures and explained the high risky nature of the trading to him and made him understand that there were no guarantees to inn digital currency investment and the likelihood of ending up with no returns was a high as the likelihood of ending up with over 100% returns. He however assured him he would use his skills and knowledge that had earned him the enviable reputation to ensure he derives the maximum returns.

Plaintiff under cross-examination admitted knowing about the high risk of digital currency. Below are excepts from the cross-examination of Plaintiff by counsel for Defendant;

CROSS EXAMINATION:

Q: How do you know defendant

A: As stated in my witness statement I got to know him through his work colleague.

Q: What did this work colleague tell you with regards to the Defendant.

A: He told me about Defendant's trading on the digital platform

Q: How long was this

A: Somewhere September, 2019

Q: Why did you desire to meet the Defendant

A: I desired to meet Defendant to understand what he does in term of trading and understand his result in the trading and probe further how he achieves those results.

Q: And you got convinced that he was good at trading not so

A: Yes my Lord

Q: When you probed further what did you find out

A: The results were positive. He was doing well

Q: Was he gaining 100% on his trading platform

A: No my Lord

Q: So in some instances he made loses not so

A: No. All the results I Probed he never made loses

Q: But you understood that to mean that he could make loses

A: No my Lord

Q: Beside probing into Defendant's trading history you must have done your own independent research into trading of bit coin or crypto currency

A: Yes my Lord

Q: And that must have revealed to you that profit on trading was not 100% full proof I put it to you

A: Yes my Lord. I do know. That is how come in choice of a trading partner you probe the result to select a trading manager who manages the account

Q: So you were aware of the likelihood of loses not so.

A: No my lord. Per the result he had shown and per my engagement with him he indicated that he blocks the funds from the platform to avoid loses and secondly in his own words he is not a greedy trader and when the market is not good he does not trade and when the market is good he only goes there to trade for a maximum of 1% and closes trade.

Q: `So you see he explained to you the risk factors involved in the trading not so

A: Yes my Lord

Q: So you knew the risk associated with trading in crypto currency before jumping into it not so

A: Yes I knew the risk however he had indicated the mitigations

Defendant tendered in evidence as exhibit 1 extracted whats app conversation between himself and Plaintiff. A careful reading of exhibit discloses that Plaintiff understood the digital currency trade and was well vest in how it operates and its viable periods. Plaintiff from the conversation between him and Defendant is clearly not an amateur in digital currency trade. As quoted

by counsel for Plaintiff in his written submission, it is an established principle in the case of **Fynn vrs. Eynn and Osei [2013-2014] 1 SCGLR 727 at page 730**, and plethora of cases that where an adversary had admitted a fact advantageous to the cause of a party that party would not need any better evidence to establish that fact than by lying on such an admission.

Plaintiff having admitted that Defendant explained the high risk factors in the trading to him before joining in the trade, and having evinced high knowledge and understanding of the digital currency trade, the court finds that Defendant explained the high risk nature of the trade to him.

Issue iv - Whether or not the Defendant confessed to the Plaintiff that he had retrieved 98% of the Plaintiff's investment and interest accrued? "

Plaintiff's evidence is that on 1st December 2021, he notified Defendant of his intention withdraw the investment and the interest accrued thereon and not roll same over on 1st of January 2022 as he needed same to attend to some urgent matter. Defendant acceded to his request but on 26th of December, 2021, Defendant informed him he needed two weeks to retrieve the investment amount and the interest accrued. But failed to do so. He stated that Defendant gave him further assurance of the retrieval of the investment and interest accrued thereon on 14th January 2022 but yet again failed. Plaintiff further testified that they accrued for Defendant to periodically update him on the status of the recovery of his investment and interest. Later, Defendant informed him that he had been able to retrieve 98% of the investment as at 29th March 2022 via whatsapp conversation i.e exhibit E series but failed to pay the monies to him claiming he had been blocked from the trading platform. Plaintiff stated further that upon offering to assist Defendant in unblocking his access to the trading platform, Defendant confessed to him that it is untrue that he has been blocked and that he had

retrieved 98% of Plaintiff's monies but had used same to settle other creditors and pleaded for time to pay his investment to him.

Defendant denied this claim of Plaintiff contending that the he encountered difficulties on the trading platforms due to external shocks such as Corvid 19 pandemic and subsequently the market took a nosedive. This not withstanding he worked hard to ensure Plaintiff does not loose out on his capital. However despite his diligence, the volatilities on the trading platforms resulted in losses on all accounts he was trading on and same is not limited to only Plaintiff's.

The court is faced with two diverse claims and the court is duty bound to determine which version on preponderance of probabilities is more probable. Section 12(2) of Act 323 defines preponderance of probabilities as *"Preponderance of the probabilities" means that degree of certainty of belief in the mind of the tribunal of fact or the Court by which it is convinced that the existence of a fact is more probable than its non-existence.*

Perusal of exhibits E and 1 discloses that Defendant in the month of February to March periodically updated Plaintiff on the percentage of retrieval he had made on the investment. Per the said exhibits, on 29th march 2022, Defendant intimated to Plaintiff that he had retrieved a total of 98% of the investment which at that period was over $60,000. Defendant in exhibits E series and 1 at no point in time after the 29th of March 2022 communicate any subsequent losses on Plaintiff's investment. On the contrary, per exhibit F, A snapshot of whatsapp conversation between counsel for Defendant and Plaintiff, Defendant's counsel on 14th May 2022 informed Plaintiff that in furtherance of their voice communication, Defendant would come up with a payment plan for the payment of Plaintiff's investment. These pieces of evidence support Plaintiff's claim that Defendant retrieved 98% of the investment from the digital currency platform, failed to pay same to him but

promised to pay same to him through a payment plan. As to the alleged confession of Defendant to the using Plaintiff's money to settle other creditors, the evidence on record does not disclose as such. Though the alleged confession to the use of Plaintiff's retrieved investment is not established per the evidence on record, the court finds that Defendant indeed retrieved 98% of Plaintiff's investment and interest accrued thereon and agreed to pay same to Plaintiff.

Conclusion

Per the evidence on record, it has been established that Plaintiff invested a total of $20,436.98 with the Defendant. It is also established that the 98% of principal sum together with the interest accrued on the said investment retrieved by Defendant, as at 29th March 2022 was over $60,000.00. Plaintiff therefore satisfactorily proves his case on the preponderance of probabilities.

Plaintiff's claim before the court is for recovery of the principal sum only without the accrued investment interest. Plaintiff's claim for payment of his principal sum only from Defendant and further prays for interest on the said principal sum from 6th December, 2019 till date of final payment.

From the record, although plaintiff made a demand for the refund of his investment sum from the Defendant, it was 29th of March 2022 being the date Defendant retrieved 98% of the total investment and agreed to refund same to Plaintiff. Interest on the demanded principal sum therefore accrued after 29th March 2022 and not 6th December 2019. Accordingly judgment is entered in favour of Plaintiff as prayed per his writ of summons as follows;

i. Recovery of the Cedi equivalent of the sum of $20,436.96 (Twenty Thousand Four Hundred and Thirty Six United States of American Dollars Ninety Six Cents) being the principal sum under the Investment.

ii. Interest on the aforementioned sum from April 2022 till date of final payment at the bank of Ghana rate.

iii. Cost assessed at GHC10,000.00

PARTIES PRESENT

MR HANS AWUDE WITH RIHANA ESMERALDA BOGOBIRI FOR PLAINTIFF PRESENT

MR VICTOR LASSEY FOR DEFENDANT PRESENT

(SGD)
H/H AFIA OWUSUAA APPIAH (MRS)
(CIRCUIT COURT JUDGE)