

**IN THE CIRCUIT COURT ONE HELD AT ACCRA ON MONDAY, 20TH
MARCH 2023, BEFORE HER HONOUR AFIA OWUSUAA APPIAH (MRS),
CIRCUIT COURT JUDGE**

SUIT NO: C2/169/2021

**INDGHA PACKAGING INDUSTRIES LTD.
PLOT NO.36B, HEAVY IND. AREA, TEMA
SUING PER ITS LAWFUL ATTORNEY PLAINTIFF GLOBAL DEBT
TRACKERS LTD.
H/SE NO.: 72, 4TH TSUIANA STREET SWANLAKE
OLD MELCOM ROAD NORTH KANESHIE - ACCRA**

VRS

**BARON WATER HOUSE LTD.
PER ITS MANAGING DIRECTOR RESPONDENT 5 SPINTEX RD,
ACCRA**

JUDGMENT

Plaintiff per their lawful attorney on 29/7/2021 instituted this suit against

Defendants herein and subsequently praying the court for the reliefs below:

- a) An order for recovery of the sum of Five Hundred and Sixty-Six
Thousand, One Hundred and Fifty-Seven Ghana Cedis, Forty-Seven
Pesewas (GHC566, 157.47) which represents Defendant's indebtedness
to Plaintiff as at September, 2020.
- b) Interest on the said amount at the prevailing commercial rate from
September 2020 until date of final payment.
- c) Cost.

Plaintiff in their amended statement of claim pursuant to an order of the court
dated 8/3/2022 states that it is a limited liability company incorporated under

the laws of Ghana carrying on businesses including manufacturing of packaging materials whilst Defendant is a limited liability company in the business of producing Ice pack water. Plaintiff's case is that based on a mutual agreement, Plaintiff was supplying packaging materials on credit basis to Defendant. From the period of January 2020 to September 2020, Plaintiffs supplied Defendants with some quantities of packaging products amounting to GHC1,061,119.43 out of which Defendants made payment of GHC494,961.96 leaving GHC566,157.47 outstanding as at 23rd September, 2020. Plaintiffs averred that Defendant had failed to pay the said amount despite several demand made on them.

Defendant in their Amended statement of defence admitted receipt of goods and products from Plaintiffs but on various occasions up to September 2020 but contended that the goods supplied were not up to the quantity and quality agreed to between the parties hence their decision to make part payment of GHC494,961.96. Defendant admits owing Plaintiffs but not to the tune of GHC566157.47 and contended that they were awaiting the resolution of the issues of defect as to quality and quantity of the goods supplied in order to make the due outstanding balance but the issues remain unsolved. Defendants contended further that they would only make payment of the outstanding when all issues are resolved between them.

Parties were referred to the Alternative Dispute Resolution Centre for settlement but same was unsuccessful.

The following issues were therefore set down as issues for trial

- a. Whether or not the goods, the subject matter of this suit measure up to the quality and quantity of the agreement.
- b. Whether or not the Defendant is indebted to the Plaintiff in the sum endorsed on the writ of summons.
- c. Whether or not Plaintiff is entitled to its claim.
- d. Any other issues arising from the pleadings.

The Standard of proof in civil case such as the present action is proof of the preponderance of probabilities. See sections 11(4) and 12 of the Evidence Act, 1975, NRCD 323(hereinafter referred to as NRCD 323. 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.* In the case of **ADWUBENG V DOMFEH (1997-98) 1 GLR 282** it was held per holding 3 as follows: *“ And sections 11(4) and 12 of NRCD 323 clearly provided that the standard of proof in all civil actions, without exception, was proof by a preponderance of probabilities. Accordingly, the cases which had held that proof in title to land required proof beyond reasonable doubt no longer represented the present state of the law”.*

Section 14 of the Evidence Act 1975, NRCD 323 provides “except as provided by law, unless and until it is shifted a party has the burden of persuasion as to each fact the existence or non-existence of which is essential to the claim or

defence he is asserting". This has always been the position of the law. Also in the case **Faibi vs. State Hotels Ltd [1968] GLR 411**, it has been held that the onus in law lay on the party who would lose if no evidence were led in the case and where some evidence were led, it lay on the one who would lose if no further evidence were led.

Defendants failed to file their witness statement as ordered by the court and further failed to appear in court for the conduct of the matter despite several hearing notices served on their counsel. It is trite learning that where a court has taken a decision without due regard to a party who was absent at a trial because he was unaware of the hearing date that decision is a nullity for lack of jurisdiction on the part of the court. See **Barclays Bank v Ghana Cable Co. [2002-03] SCGLR 1** and **Vasque v Quarshie [1968] GLR**

62. However, where the party affected was sufficiently aware of the hearing date or was sufficiently offered the opportunity to appear but he refused or failed to avail himself (as evident in this case) the court was entitled to proceed and to determine the case on the basis of the evidence adduced at the trial. See *In re West Coast Dyeing Ind. Ltd; Adams v Tandoh* [1987-88] 2 GLR 561.

Plaintiff called two witnesses to testify in this matter. Michael Agyarko a court clerk for the Plaintiff's lawful attorney and Linda Adjei the accountant for Plaintiff testified as PW1 and PW2.

PW1 tendered in evidence as exhibit A, the Power of Attorney Plaintiff's had executed for them whilst PW2 tendered in evidence exhibit B, C and D series the invoices and way bills for 2018 and 2019

Issue a- Whether or not the goods subject matter of this suit measure up to the quality and quantity of the agreement.

Defendants put in issue the quantity and quality of the products and goods supplied to them by the Plaintiffs. Defendant however failed and or refused to file their witness statement or any other evidence to establish this assertion.

Brobbeey JSC at holding 5 in the case of In RE ASHALLEY BOTWE LANDS, ADJETEY AGBOSU AND OTHERS V KOTEY AND OTHERS (2003-04) SCGLR 420 held that the effect of sections 11(I) and 14 and similar sections in the Evidence Decree 1975 may be described as follows: “A litigant who is a defendant in a civil case does not need to prove anything. The plaintiff who took the defendant to court has to prove what he claims he is entitled to from the defendant. At the same time, if the court has to make a determination of a fact, or of an issue and that determination depends on evaluation of facts and evidence the defendant must realize that the determination cannot be made on nothing. If the defendant desires the determination to be made in his favour, then he has the duty to help his own cause or case by adducing before the court such facts or evidence that will induce the determination to be made in his favour” Section 11(1) of, NRCD 323 provided “For the purposes of this Act, the burden of producing evidence means the obligation of a party to introduce sufficient evidence to avoid a ruling on the issue against that party.” Defendant herein failed/refused to give any evidence whatsoever in support of his claims that the quantity and quality of the products supplied to

them by the Plaintiff did not measure up to the agreement. This assertion remains unproven and same is dismissed.

Issue b & c - Whether or not the Defendant is indebted to the Plaintiff in the sum endorsed on the writ & whether or not Plaintiff is entitled to their claim

PW2, testified that parties mutually agreed for Plaintiff to supply Defendant with packaging materials on credit basis. She stated that Plaintiffs supplied Defendant with packaging materials to the tune of GHC1,061,119.43 on various occasions up to September 2020 out of which only GHC494,961.96 was paid leaving an outstanding balance of GHC566.157.47. Exhibits B is the ledger/ account of Defendant held by Plaintiffs/2013 to 25/3/2021 for the period 1/1; Exhibit C are invoices and waybills of products supplied to Defendant by Plaintiff for the period 2018, 2019.

The claim of plaintiff as per paragraph 4 of the Amended statement of claim is that on various occasions, Plaintiff had supplied Defendants to the tune of GHC1,061,119.43. A perusal of exhibit B 24 discloses that as at 23/9/2020, the closing balance of defendant's ledger was GHC1,061,119.43 with GHC494,961.96 being payment made and an outstanding balance of GHC566,157.47. Defendants who failed and or refused to attend trial did not challenge evidence of PW2. Supreme Court case of [FORI v. AYIREBI AND OTHER \[1966\] GLR 627](#) held that "when a party had made an averment and that averment was not denied, no issue was joined and no evidence need be

led on that averment. Similarly, when a party had given evidence of a material fact and was not cross-examined upon, he need not call further evidence of that fact”.

In this instance, not only does PW2, the accountant of Plaintiff testify to Defendant owing to the tune of GHC566,157.47 but further established same through exhibit B series. The court therefore finds that Defendant as at 23/9/2020 owed Plaintiffs GHC566,157.47 as endorsed on the writ of summons.

CONCLUSION

Judgment is accordingly entered in favour of Plaintiff against Defendant as below;

- a) Recovery of the sum of Five Hundred and Sixty-Six Thousand, One Hundred and Fifty-Seven Ghana Cedis, Forty-Seven Pesewas (GHC566, 157.47) which represents Defendant's indebtedness to Plaintiff as at September, 2020.
- b) Interest on the said sum of Five Hundred and Sixty-Six Thousand, One Hundred and Fifty-Seven Ghana Cedis, Forty-Seven Pesewas (GHC566, 157.47) at the prevailing bank rate from September 2020 until date of final payment.

c) Cost assessed at GHC10,000 Cedis

PLAINTIFF REPRESENTED BY LINDA NARKI ADJEI

(ACCOUNTANT) DEFENDANT ABSENT

**MR ISAAC ESSIEN HOLDING BRIEF OF KOBINA FOSU
FOR PLAINTIFF PRESENT**

EDDIE MACCARTHY FOR DEFENDANT ABSENT

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

