

**IN THE CIRCUIT COURT OF JUSTICE, SITTING AT ASHAIMAN ON  
MONDAY THE 16<sup>TH</sup> DAY OF JANUARY, 2023, BEFORE HIS HONOUR  
SIMON GAGA**

**SUIT NO. C2/22/22**

**BRUCE KASSIM**  
H/NO. GT-308-0356  
ADJEI - KOJO



**PLAINTIFF/RESPONDENT**

VRS

**KOFI TAWIAH LARWEH**  
OF DORYUMU, ACCRA



**DEFENDANT/APPLICANT**

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**RULING ON A MOTION ON NOTICE TO SET ASIDE DEFAULT  
JUDGMENT**

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On 16<sup>th</sup> day of September, 2022, the Applicant herein through his Counsel Dubik Mahama, ESQ, filed a Motion on Notice praying the Court to set aside Default Judgment entered against him in favour of the Plaintiff/Respondent by this Court on 10<sup>th</sup> day of May, 2022 for not filing defense to the Plaintiff/Respondent's Writ of Summons and Statement of Claim.

**THE CASE OF THE APPLICANT;**

The gravamen of the application as gathered from the Applicant's affidavit in support and the supplementary affidavit is that the Plaintiff/Respondent served him with a Writ of Summons and Statement of Claim which he entered a Conditional Appearance in person on the 28<sup>th</sup> day of March, 2022.

According to the Applicant, shortly after filing the Entry of Appearance, he went on an emergency trip outside the jurisdiction, hence could not file defense to the action.

He further deposed that item two on the Entry of Judgment, which is the interest, is not consistent with the claims on the Writ of Summons and paragraphs five and nine of the Statement of Claim, which was shown as Exhibit 2. To the Applicant, the Respondent has unilaterally bloated the interest rate as against the agreed interest per the drawn contract.

He further deposed that he has a defense to the Plaintiff/Respondent's claim as well as a counterclaim. He therefore prayed the Court to set aside the Default Judgment to enable him file his defence and counterclaim.

The Applicant deposed in the supplementary affidavit that he provided his Ford Ranger pickup with registration number GE-2031-12 valued GH¢80,000.00 as collateral.

The Applicant further deposed that though the Plaintiff managed to secure judgment in default of defense against him, the Plaintiff is still in possession of the vehicle because he used it as collateral. He therefore prayed the Court to set aside the Default Judgment.

#### **THE CASE OF THE PLAINTIFF/RESPONDENT;**

The Plaintiff/Respondent vehemently opposed the Applicant's motion in both his affidavit in opposition and of his supplementary affidavit in opposition.

According to the Respondent, the Applicant has no legal defense to the action since what the Defendant sees in the claim has to do with the interest on the principal amount. The Respondent deposed that there is nothing wrong with the interest since the calculation was based on a Commercial Bank lending rate.

The Respondent further deposed that the Applicant has failed to attach any legal defense to the application to show that indeed he has a defence to the action.

He again deposed that the Applicant took two separate loans from him and used his vehicle and original copies of his *landed* property as collateral for the various loans. The Respondent exhibited the documents to that effect as Exhibits 1A and 1B respectively. He therefore prayed the Court to dismiss the application.

Both Counsel made oral submissions to the application.

#### **SUBMISSION BY COUNSEL FOR APPLICANT;**

Counsel for the Applicant's oral submission was not all that different from the depositions in the affidavit in support.

He submitted that in the claim of the Plaintiff, the Plaintiff was demanding 20% interest but in the Entry of Judgment, he stated 25%. Since it is a summary judgment, the Plaintiff cannot ask for more than what was on the claim.

Counsel submitted that the Plaintiff cannot ask for more than what is in the reliefs. If a judgment is entered in favour of the Plaintiff, the Defendant can set it aside by application and there is no time limit. He referred the Court to page 365 of the book "CIVIL PROCEDURE, A PRACTICAL APPROACH" by Kwame Tetteh.

#### **SUBMISSION BY COUNSEL FOR RESPONDENT;**

Counsel for Respondent repeated the depositions in the affidavit in opposition.

He further stated that even though the Applicant deposed that after appearance, he left the jurisdiction of this Court. However, Applicant failed to demonstrate to the Court that he indeed was out of the jurisdiction of this Court.

Counsel further averred that Order 14 rule 9 of the CI 47 requires the Applicant to set aside the Default judgment within 14 days, which the Applicant failed to do. He therefore prayed the Court to dismiss the application.

#### **APPLICABLE LAW AND EVALUATION;**

I believe that the application is grounded on Order 10 rule 8 and Order 13 rule 8 of CI 47. These two provision explain that the Court on application by any party affected by a Default Judgment, such judgment may be set aside or vary on such terms as it deems fit. There is no time limit for such an application but should be made within a reasonable time upon the entry of the judgment.

The main issue for consideration is whether or not the Judgment in Default of Defense can be set aside or not.

Per the reliefs on the Writ of the Plaintiff filed on 10<sup>th</sup> day of March, 2022 were as follows;

1. An Order for the payment of an amount GH¢60,000.00 being balance of GH¢100,000.00 the plaintiff assisted the defendant financially since 2<sup>nd</sup> day of July, 2018 with an interest of 20% which the defendant has failed or refused to pay after several repeated demands by the plaintiff.
2. Interest of 20% on the amount from 2<sup>nd</sup> day of July, 2018 and interest of the said amount at the current bank rate from 10<sup>th</sup> day of March, 2022 till final date of payment.

The Writ together with the Statement of Claim were served on the Defendant/Applicant. The Defendant filed Notice of Appearance after which he went to sleep without filing any Defence to the Statement of Claim of the Plaintiff.

The Plaintiff on 26<sup>th</sup> day of January, 2022 filed Motion on Notice for Judgment in Default of Defence. This Court on 15<sup>th</sup> day of June, 2022 entered judgment in favour of the Plaintiff.

It is this judgment that the Defendant/Applicant wants to set aside.

By Order 13 of CI 47, a Plaintiff may apply for a judgment against a Defendant who has entered Appearance but fails to file a Statement of Defence within the prescribed time. The applicant for judgment in Default of Defence shall be on notice to the Defendant.

Under Order 7 rule 12 (4) a judgment either in Default of Appearance or Defence shall only be granted if there is evidence that the Writ of Summons and the Statement of Claim have been served on the Defendant.

Where it is a liquidated claim, the Plaintiff shall be entitled to enter final judgment for the sum claimed and cost.

SEE: A PRACTICAL GUIDE TO CIVIL PROCEDURE IN GHANA by Samuel Marfo-Sam (page 65).

Also, in his book THE TRIAL COURTS AND TRIBUNALS OF GHANA, Justice Brobbey (JSC) at page 392 explains that final orders for that matter, judgment is the command issued by the Court that a party or someone should do or refrain from doing something. The order should be directly relate to the reliefs, claims or counterclaims.

If one reads through the reliefs of the Plaintiff/respondent in this instant suit, it is a liquidated suit which falls under order 13 of CI 47; and by the rules of the Court, a judgment in a liquidated claim is a final judgment.

However, where an amount granted to the Plaintiff is greater than what was in fact due, the judgment could not be treated as final judgment.

SEE the case of MORKOR VRS. KUMA (MO1) (1999/2000) 1 GLR 721.

I have read through all the processes filed by the parties in this suit, I have also listened to submission by both their Counsels. I am convinced that the judgment was regularly obtained and what the Court granted the Plaintiff is not different from the reliefs in the Writ of Summons. The Applicant, in my view, is confused about the interest on the amount at the prevailing Commercial bank rate as stated in the judgment. I therefore dismiss the application.

I award cost of GH¢3,000.00 against the Applicant.

(SGD) (H/H) SIMON GAGA  
(CIRCUIT COURT JUDGE)

1. COUNSEL FOR PLAINTFF/RESPONDENT  
ADU HACKMAN FOR EBENEZER AHIATOR, ESQ.
2. COUNSEL FOR DEFENDANT/APPLICANT  
YAKUBU DUBIK MAHAMA, ESQ.

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