

IN THE CIRCUIT COURT OF GHANA HELD IN ACCRA ON FRIDAY THE 3RD
DAY OF FEBRUARY 2023, BEFORE HER HONOUR ROSEMARY BAAH TOSU
(MRS) - CIRCUIT COURT JUDGE

SUIT C2/135/2022

STEPHEN OFOSUHENE == PLAINTIFF/APPLICANT
(*SUING PER HIS LAWFUL ATTORNEY*
CASSANDRA ASAFO)
H/NO. A259, 5TH AVENUE
BAATSONA, ACCRA

VS

MATHIAS GOLLO == DEFENDANT/RESPONDENT
UNNUMBERED HOUSE
AGBOGBA, ACCRA

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RULING

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Plaintiff Applicant hereinafter referred to as the Applicant suing per his lawful attorney prays this Honourable Court for the following reliefs

- i. Recovery of the sum of USD 11, 146.00 being monies received from the Plaintiff and his sister Cassandra Asafo.
- ii. Interest on the sum stated in (i) from 13th February, 2019 till date of payment.
- iii. Damages for breach of contract
- iv. Cost including solicitor's fees

Defendant Respondent, hereinafter called Respondent entered conditional appearance to Plaintiff's Writ of Summons and Statement of Claim and later filed a Statement of Defence. Respondent denies Applicant's averments/claims. However, Respondent has no Counterclaim.

Briefly, Applicant pleads that he is a businessman who is resident in the United States of America, whilst Respondent is in the business of importation and sale of cars. Applicant says that Respondent approached him sometime in July, 2013 about

a business proposal in which Applicant would pre-finance the purchase, shipping and clearing of cars to be sold in Ghana for profit.

It was agreed that Respondent will first bid for a 2013 Toyota Corolla sports vehicle from a USA auction site. Respondent won the bid for USD 3,213 with associated costs. Applicant then transferred this amount to Respondent for the purchase of the said vehicle.

Upon the arrival of the vehicle in Ghana, Respondent informed Applicant that the car was red, however, there was another 2013 Toyota Corolla vehicle in the container which was grey and whose owner could not clear the as a result of the duty charges.

Respondent then suggested to Plaintiff that they should clear the said vehicle so that when it is sold the profit will be shared.

Applicant pleads that he caused his sister, one Cassandra to pay to the Respondent an amount of USD 5,046.00 for the duty and clearing of the vehicles. He further says he subsequently sent an amount of USD 2, 887.00 to Respondent for the purpose of fixing the two cars.

Respondent informed Applicant later that he had sold the red Toyota Corolla for GHS54,000 and would transfer the said amount to him. Respondent failed to do this and became unreachable. Sometime in February, however, Respondent sent a voice note to Applicant that he had spent the amount of GHS54,000 to resolve a personal issue and would refund it. Further attempts to compel Respondent to transfer this amount failed.

Applicant was compelled to instruct his sister to report the matter to the Police where Respondent admitted that he took the said amounts and refunded GHS8000.

In his Statement of Defence, Respondent claims to be unemployed. He averred that it was Applicant who wanted to do business with him. Respondent further denies that the Applicant transferred any monies to him. He pleads further that he was made to pay the said amount under duress to the Police. He denies the claims of Applicant

Based on this Statement of Defence, Applicant filed a motion on notice for Summary Judgment. His lawful attorney deposed to the affidavit in support of the motion. It is Applicant's case that Respondent's Statement of Defence is not viable because it does not disclose any reasonable defence in law.

Attached to the affidavit in support are the following documents

- *A payment agreement between Respondent and Plaintiff's lawful attorney in which Respondent promised to pay the sum of GHS 61, 500 by 29th March, 2019- exhibit CA1*
- *Whats App chats between Applicant and Respondent – exhibit CA2.*
- *Police Statement- exhibit CA 3*

In Applicant's Written submissions, he urges on the Court that he seeks to abandon the sum of USD11,146.00 claimed and rather seek summary judgment for the sum of GHS61,500, which in exhibit CA1, is the amount agreed between the parties to be due to Applicant.

Applicant supports his prayer with Order 14 rule 5(1) a, which provides as follows;

5(1) On the hearing of the application the court may

(a). give such judgment for the plaintiff against the Defendant on the relevant claim or part of a claim as may be just having regard to the nature of the remedy or relief sought, unless the Defendant satisfies the Court, with respect to that claim or part of it, that there is an issue or question in dispute which ought to be tried or that there ought for some reason to be a trial of that claim or part of it.'

Applicant says that Respondent is currently being tried in the Circuit Court for Defrauding by False Pretences and is truly indebted to Applicant.

Respondent filed an affidavit in opposition to the Motion for Summary Judgment. In this affidavit in opposition, he simply denies Applicant's averments and insists that he was made to pay the money to the Police under duress before he was granted bail. Respondent denies transacting any business with Applicant and says that he has a Counterclaim before this Court, which this Court must look into. I am however yet to sight this Counterclaim.

DECISION

In the case of *Yartel Boat Building Co. vs Annan (1991) 2 GLR11*, Kpegah J (as he then was) held of Order 14 that

'it prescribes the procedure to be followed by a Plaintiff who wishes to obtain Summary Judgment against his adversary. It does not confer on a Plaintiff an absolute right to proceed for Summary Judgment in every case. Its purpose or aim is

to permit a Plaintiff to obtain summary judgment without necessarily going to trial if his claim is clear and the Defendant is unable to set up any bonafide defence, or create a situation indicating that there are triable issues between him and the Plaintiff'

His Lordship, further went ahead to state the conditions under which an application for summary judgment may be successful

- a. The Defendant must have been served with a Statement of Claim and an important consideration is whether Plaintiff's claim is clear and whether Defendant has any defence to it.**
- b. Defendant must have entered appearance to Plaintiff's Writ of Summons**
- c. An averment that Defendant has no defence to the action should be an integral part of the affidavit**
- d. Plaintiff must depose to facts indicating that his claim is real and considerably unimpeachable.**

The most important take away from this holding is that Plaintiff's claim must be real, clear and considerably unimpeachable and secondly Defendant's defence should not be bonafide, meaning it should be a sham and he should have been unable to create a situation which proves to the Court that there are triable issues.

I do find that Applicant's affidavit in support satisfies these requirements. Applicant claims a specific amount of GHS61,500 his amount is clearly a liquidated claim and Applicant has deposed to facts to show that his claim is real and considerably unimpeacheable.

The next step is to determine whether Respondent has a bonafide defence or has been able to create a situation which shows that there are triable issues between him and Applicant.

A Respondent's duty when faced with such an application is as per Rule 3(1) of Order 14. A respondent is to show cause either by affidavit or otherwise.

Respondent simply denies the claims of Applicant and does not provide any further information to support his claims. Respondent denies that he had any agreement with Applicant nor that he received any monies from Applicant's lawful attorney. Strangely enough, Respondent does not respond to the exhibits attached to the motion by Applicant.

These exhibits are in direct contrast to Respondent's denials, they actually show that Respondent was in a business deal with Applicant and had failed to stick to his side of the bargain.

Benin JSC held in the case of **Abivams Limited vs Platun Gas Oil Ghana Limited (Civil Appeal No. J4/29/2016)** that

"In summary, the Court must be satisfied that on the facts and law the Defendant ought to be given the opportunity to be heard on merits, where his defence raises reasonable and arguable points and it is not intended merely to cause delay and is not a sham. A complete defence is not required at this stage; but as was held in Wallingford vs. Mutual Society (1880) 5 App Cases 68529 W.R 81 HL a mere denial is insufficient, the Defendant must give sufficient facts and particulars to show that there is a bona fide defence".

Neither, the Respondent's defence nor affidavit in opposition has raised any triable issues in this matter. I am not satisfied that on the law and the facts that Respondent has a bonafide defence. The defence is a sham and a mere denial.

Applicant's motion for summary judgment is granted for the sum of GHS61,500. Applicant is entitled to interest on this amount at the prevailing bank interest rate from April 2019 till date of final payment.

Rather belatedly Respondent has filed a Written Submission after there has been an adjournment to give a ruling on the motion on notice for summary judgment. I take note of these submissions because they have nothing to do with the matter for which this Court must arrive at a decision.

Applicant entered conditional appearance to Respondent's Writ of Summons on the 3rd of June, 2022. Per Order 9 rule 8, within fourteen days after filing appearance, a Defendant may apply to the Court for an order to

- a. Set aside the writ or service of the writ*
- b. Declare that the writ or notice of it has not been served on the Defendant, or*
- c. Discharge any order that gives leave to serve the notice on the defendant outside the country.*

Respondent did not take advantage of this provision before his conditional appearance crystallised into a normal entry of appearance. The rules of Court are

formulated to guide and control the conduct of civil proceedings and are not to be taken for granted.

Respondent has gone ahead to take further steps in this matter by filing a Statement of Defence and also an affidavit in opposition to Applicant's motion for Summary Judgment. Respondent is deemed to have waived his right to challenge the alleged irregularities in Applicant's Writ of Summons and Statement of Claim.

Respondent has also not pleaded any of the issues raised in his Written Submissions in his Statement of Defence. This amounts to ambush litigation which the rules frown upon.

I find these submissions filed on the 30th January, 2023 to be without any merit since they are not in support of any particular application or motion seeking orders from this Court. The submission is also not referable to the motion on notice for summary judgment, it is struck out as being alien to the rules of Court.

Costs of GHS10,000 in favour of Plaintiff/Applicant.

**H/H ROSEMARY BAAH TOSU (MRS)
CIRCUIT COURT JUDGE**

Representation

Plaintiff absent

Defendant present

Edem Nuhoho for Plaintiff/ Applicant.

Ebenezer Gohoho for Defendant/ Applicant