

**IN THE CIRCUIT COURT OF GHANA HELD IN ACCRA ON FRIDAY THE 19TH
DAY OF MAY, 2023 BEFORE HER LADYSHIP ROSEMARY BAAH TOSU- HIGH
COURT JUDGE SITTING AS AN
ADDITIONAL CIRCUIT COURT JUDGE**

SUIT NO: C2/120/2018

1. PATRICK BAIDOO === PLAINTIFFS
2. CAITEC DELTA LIMITED

VS

DAVID AZUMAH NELSON === DEFENDANT

JUDGMENT

1st Plaintiff is a Credit Sales Manager in 2nd Plaintiff Company which is the owner of the vehicle subject matter of this suit. 1st Plaintiff pleads that on or about the 7th day of May, 2017, he was picking up a computer along the Farrar Avenue in Accra. 1st Plaintiff says that he drove a Hyundai Santa Fe with registration number, GE 3278-17, which he had parked in front of the shop premises off the road.

According to 1st Plaintiff, the Defendant, who was under the influence of alcohol, was in charge of an unregistered Nissan Maxima vehicle. Defendant under the said influence skidded off the road and run into 2nd Plaintiff's parked vehicle.

It turned out that Defendant's vehicle was uninsured at the time of the incident. Defendant was arraigned before a Motor Court and fined after he was convicted on his own guilty plea.

Defendant despite his promises to repair the said vehicle has failed to do so. Plaintiffs plead that the outstanding expenses on the repairs stand at GHS9,270.00. 1st Plaintiff also pleads that he has spent an amount of GHS5000 on alternative transport and fuel for his rounds in town which was incidental to the said incident.

Plaintiffs pray for the following reliefs

- 1. An order for the payment of GHS9,270 being the balance on the repair of the vehicle*
- 2. An order for the payment of GHS5000 being the expenses incurred by the Plaintiff incidental to the accident*

- 3. Damages for the accident caused under the influence of alcohol*
- 4. Any other costs as this Court may deem fit*
- 5. Costs of this suit*
- 6. Lawyer's fees*

In his defence, Defendant admits most of the pleadings of Plaintiff, however he denies that he drove his unregistered vehicle under the influence of alcohol. Defendant pleads that the incident occurred as a result of mechanical or brake failure.

Defendant further denied that he has failed to repair Plaintiffs' vehicle. He pleads that 1st Plaintiff is aware that he has advanced monies to a welder to have the vehicle repaired but due to financial constraints, he has been unable to complete the repairs. That this situation led him to even write to 2nd Plaintiff for support in completing the repairs.

At the Application for directions stage the following issues were set down for trial

- 1. Whether or not Plaintiffs are entitled to their claim**
- 2. Whether or not Defendant has a reasonable defence to this action**
- 3. Whether or not the Plaintiffs are entitled to the expenses of GHS5,000 incurred by Plaintiffs incidental to the accident**
- 4. Any other issues arising from the pleadings.**

EVIDENCE LED

The parties were ordered to file their witness statements and pre-trial checklists which they complied with.

Plaintiff testified that on the day in question he parked his officially assigned car with registration number GE 32878-16 in front of Stadia Boutique at Asylum Down. Whilst in the room of his friend they heard the sudden noise of vehicle tires making a screeching sound, which ended with a big bang. They rushed out only to see 2nd Plaintiff's car crashed by Defendant.

1st Plaintiff says he together with his friend helped Defendant who was accompanied by two friends out of the car. According to 1st Plaintiff, Defendant and his group were drunk and so smelled of alcohol. Defendant after being chastised by his friend for driving in his drunk condition, got up went around the two mangled vehicles and said *“oh as for we will do it”*.

Plaintiff said he reported the incident to the Police MTTU Division who towed the vehicles for further investigation. Plaintiff testified that during the course of investigations, Defendant without any prompting, admitted his liability in the whole incident and promised to repair 2nd Plaintiff's vehicle. Defendant started a few repairs however, he began to complain about financial challenges, insisting that the Plaintiffs' help him to repair the said vehicle.

This the Plaintiffs could not do.

1st Plaintiff says following Defendant's failure to repair the vehicle, he made a complaint to the Police MTTU, who arraigned Defendant before the Motor Court. Defendant pleaded guilty and was fined. Defendant's reaction to the fine was

‘Oh if I knew that this would be that simple from the start, I wouldn't have bothered myself’.

Defendant became incommunicado and for about three years he failed to repair the vehicle.

1st Plaintiff says that the estimated cost of outstanding repairs to carried out on the vehicle is GHS9270. 1st Plaintiff also testified that he spent GHS5000 on fuel on vehicles he borrowed and also on taxi fares and towing of the vehicle.

1st Plaintiff finally testified that the whole affair and Defendant's subsequent attitude has caused him emotional trauma and anxiety and financial difficulty, he therefore prays in addition to the reliefs that he is entitled to the payment of damages.

1st Plaintiff attached the following documents in support of his claim

- Exhibit A series – Pictures of the current and former states of the vehicle.
- Exhibit B- Police Report on incident
- Exhibit C- Invoice

- Exhibit D series- Expenses

In his defence, Defendant admits that he drove the vehicle involved in the incident, he however blames the faulty brakes of his vehicle for the mishap. Defendant testifies that he undertook to repair the said vehicle from his own resources, however, 1st Plaintiff refused to allow Defendant's mechanic to do the repair works.

Defendant says that due to financial constraints, he reached out to the 2nd Plaintiff to assist him financially to complete the repairs. However, 1st Plaintiff resisted this and he never had any response to the official letter he wrote. Defendant says in his estimation the repair works are 95% complete. He attaches the following documents as exhibits in support of his case

- Exhibit 1-Reben Auto Body Works Invoice
- Exhibit 2- MTN Momo records
- Exhibit 3- Letter dated 12/01/2018
- Exhibit 4 series- Cash sales/Invoice receipts
- Exhibit 5- Pictures of car.

ANALYSIS OF EVIDENCE LED

In this matter not much is in controversy or denied. Defendant has admitted his role in the incident and has in fact gone ahead to start repairing the Plaintiffs' vehicle at his own expense. The only reason for this suit is Defendant's inability to complete repairing the vehicle and abandoning it for about three years as per the evidence led by 1st Plaintiff.

There is a presumption in law that when a moving vehicle hits a stationary one there is out of negligence on the part of the driver of the moving car. The onus then is on the driver, if an accident occurs to show that all possible care was taken to avoid the accident.

Unfortunately, in this matter, Defendant was unable to rebut this presumption of negligence on his part. Defendant did not provide any evidence in support of his assertion that his car brakes failed. The authorities are rife that merely pleading a fact and repeating such averments under oath does not amount to proof in law. See the case of **Majolagbe vs Larbi & Ors (1959) GLR 190**

I therefore conclude that Defendant was negligent in driving his vehicle into the stationary one of Plaintiff. Defendant does not have a reasonable defence to Plaintiffs' claim in this Court.

As stated earlier, upon acceptance by Defendant of his fault in this matter what is left for this Court to conclude on is whether Plaintiffs are entitled to the reliefs they seek in this Court.

Plaintiffs claim an amount of GHS9, 270 from Defendant as being the amount outstanding on the repair works. Plaintiffs attached an invoice, exhibit C in support of this claim. 1st Plaintiff also claims to have spent an amount of GHS5000 on fuel and transportation incidental to the loss of use of the vehicle in question. He attached receipts amounting to GHS5000 in proof.

The general rule is that he who asserts must prove. He must prove the essential issues central to his case on a balance of probabilities which is the standard of proof in a civil matter.

The case of **Martin vs Barclays Bank (GH) Ltd (2017-2018) 1 SCGLR 800** held

'The standard of proof in civil matters is for the person who assumes the burden of producing evidence to lead such evidence as to enable the trier of fact to determine that he has established his case on a preponderance of probabilities.'

Proof on the preponderance of probabilities has been defined in the Evidence Act 1975 (NRCD 323)

Section 12(2) of the Evidence Act, NRCD 323 defines proof on the preponderance of probabilities to be

'The 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/likely than its nonexistence'.

Counsel for Defendant cross-examined 1st Plaintiff on his evidence but did not make much of an impact. He did not get 1st Plaintiff to water down his evidence nor deny that he had indeed spent the said amount on transportation and fuel.

I find that Plaintiffs have discharged their burden through the evidence led by 1st Plaintiff. Having discharged their burden before this Court, the burden to produce evidence and to persuade this Court falls on the Defendant to prove that he has completed 95% of repair works on the said vehicle.

The learned author, Justice S.A Brobbey in his book *'Essentials of Ghana Law of Evidence'*, states the following on the shifting of the burden of proof at page 74.

'When it is said that the burden of proof shifts, what is meant is that after one party has adduced sufficient evidence to prove his point, the burden will move to the opposing party to adduce more cogent evidence which will disprove the opponent's case and induce the court to believe him and rule in his favour. The shifting of the burden applies only to the burden to produce evidence'.

Exhibit 1 is an invoice from 1st Plaintiff's mechanic, Reben Auto Body Works. The amount on the invoice is GHS15,460. I surmise that this figure is for the number of car parts and other accessories needed to be purchased by Defendant as testified to by both sides.

It is also without debate that an invoice is not a receipt and does not indicate payment for goods and services. In the absence of a receipt I cannot find as a fact that Defendant has paid the amount in exhibit 1 to 1st Plaintiff's mechanic nor that he bought the items listed therein.

Exhibit 2 on the other hand is a momo statement of account of the Defendant. I do find that Defendant has paid an amount of GHS750 to 1st Plaintiff's mechanic. Exhibit 4 also shows an amount of GHS700 paid for the purchase of car parts. Exhibit 4A indicates the purchase of parts worth GHS100.

The other exhibits in evidence prove as follows:

- Exhibit 4B- GHS300
- Exhibit 4C – GHS1,730
- Exhibit 4D- GHS 4,100

These exhibits show a total amount of **GHS7, 680** paid by Defendant or used to purchase spare parts to repair the said vehicle.

1st Plaintiff has not denied in his evidence and under cross-examination that Defendant has indeed contributed to the repairs of the vehicle. What 1st Plaintiff is not clear about is how much Defendant has spent on the repairs so far.

Cross-examination of 1st Plaintiff at page 34 of the record of proceedings dated 3rd November, 2022

Que: You agree that Defendant started to repair your vehicle, not so?

Ans: Yes he agreed on his own to repair and he started to do so

Que: Where did Defendant repair your car up to?

Ans: What I recall is that the mechanic finished with the body straightening, the doors and the side mirror

....

Que: So the receipt from Reben Auto works did you furnish Defendant with a copy before attaching it to your witness statement?

Ans: I couldn't have furnished Defendant with the receipt because the agreement we had was that even though we took vehicle to that garage, he would be buying the parts to be fixed. So Defendant is in the know of everything.

From the cross- examination of 1st Plaintiff, it is clear that he knew that Defendant had attempted to and indeed caused a few repairs to be made on the vehicle.

I therefore conclude that Defendant has spent an amount of GHS 7, 680 on repairs for the said vehicle. Plaintiffs' claim an amount of GHS 9,270 as per exhibit C. By my calculation, Defendant is left with a balance of GHS1,590.

I therefore hold that Plaintiffs are entitled to recover an amount of GHS1, 590 from Defendant.

Going through the record, I notice that in the hope of reaching a settlement, Defendant made a couple of payments into Court. These payments are as listed below.

1. GHS2000 paid on 27th September, 2022 vide receipt number 0250561
2. GHS5000 paid on 20th May, 2022 vide receipt number 0250201
3. GHS900 paid on 4th December, vide receipt number 0358888

Defendant has therefore paid an amount of GHS 7,900 in excess of what has been determined by this Court to be the due of Plaintiffs.

I have also concluded that without much challenge to the prayer for the payment of special damages made to this Court, 1st Plaintiff has proved that he is entitled to the amount of GHS5000 prayed for.

After deducting the amount of GHS1,590 due Plaintiffs from the amount of GHS7,900 paid into Court by Defendant, it would remain an amount of GHS6,310 in Court for the benefit of Plaintiffs.

In order for Plaintiffs not to be unjustly enriched and also for the justice of the case, I would order that an amount of GHS5,000 from the amount of GHS6,310 paid into Court be used for the payment of special damages proved by Plaintiffs.

The remainder of GHS 1,310 I would award as general damages in favour of Plaintiffs because I find that unfortunately, for all these years Plaintiffs searched for Defendant, they did not mitigate their losses.

In conclusion I award costs of GHS2000 in favour of Plaintiffs against the Defendant.

(SGD)

**H/L ROSEMARY BAAH TOSU (MRS)
HIGH COURT JUDGE SITTING AS AN
ADDITIONAL CIRCUIT COURT JUDGE**

REPRESENTATION

1st Plaintiff present represents 2nd Plaintiff

Defendant present

Kwaku Baah for Plaintiffs

Isaac Aidoo