



- d. Damages for breach of contract,
- e. Costs including legal fees on a full indemnity basis; and
- f. Any other relief(s) this Honourable Court may deem appropriate.

The plaintiff's case is that he has been friends with the defendant for over ten years and that sometime in June 2017, the defendant borrowed an amount of Fourteen Thousand Ghana Cedis (GH¢14,000.00) from the plaintiff for a business transaction and promised to pay back the principal amount by 14<sup>th</sup> July, 2017 with 20% interest on the principal amount. The plaintiff further avers that he reluctantly agreed to the proposal of the defendant and consequently, lent him the amount of Fourteen Thousand Ghana Cedis (GH¢14,000.00) requested. The plaintiff says that the defendant paid an amount of Three Thousand Ghana Cedis (GH¢3,000.00) representing the agreed interest for the period up to 14<sup>th</sup> July, 2017 within which the principal was to be fully repaid. The plaintiff further says that all attempts to get the defendant to pay the principal sum has since proved futile and the defendant keeps renegeing on his promise to pay the amount.

The plaintiff further avers that he has written several demand letters and made several telephone calls and sent text messages to the defendant demanding payment but the defendant has always failed to honour his obligations, and in the latest demand letter issued by the plaintiff's lawyers to the defendant, the latter responded and promised to pay the principal sum not later than the 28<sup>th</sup> day of February, 2023. The plaintiff further says that in the letter from the defendant committing to pay the full principal amount by the said 28<sup>th</sup> day of February, 2023, the defendant promised to pay a minimum of 50% of the principal sum amounting to Seven Thousand Ghana

Cedis (GH¢7,000.00) by the said 28<sup>th</sup> February, 2023 and the remaining principal amount was to be paid in two equal instalments not later than 1<sup>st</sup> May, 2023 with a penalty of Five Thousand Ghana Cedis (GH¢5,000.00) being payable in the event of a default.

The plaintiff avers that the defendant failed, neglected and/or refused to honour his promise to pay the entire amount at the end of February, 2023 as well as his promise to pay a minimum of Seven Thousand Ghana Cedis (GH¢7,000.00) by the same period in the event that he had any challenges that prevented him from honouring his full payment obligations. The plaintiff avers that the conduct of the defendant clearly shows that he has no intention of fulfilling his payment obligations to the plaintiff under his original agreement with the plaintiff contrary to his letter of commitment he issued to plaintiff. Thus, unless compelled by the orders of this Honourable Court, the defendant would not defray his indebtedness to him. The plaintiff further contends that as a result of the failure, neglect and/or refusal of defendant to repay the principal sum since the year 2017, the plaintiff has been put to great financial hardship and inconvenience.

On 22<sup>nd</sup> June, 2022, this Court granted final judgment in default of defence against the defendant on b, a, c which are liquidated and entered interlocutory judgment in default of defence for the plaintiff to lead evidence to proof his claim for damages.

## LEGAL ISSUE

Whether or not the plaintiff is entitled to recover damages from the defendant for breach of contract.

## ANALYSIS

The principle of law is that he who alleges must prove. In civil cases the party who bears the burden of proof is required to lead sufficient evidence so that on all the evidence, a reasonable mind will find the existence of the fact alleged to be more probable than its non-existence. This is the foundation of the burden of proof in civil cases codified in **Sections 10, 11(1) and (4) and 12** of the Evidence Act 1975 (NRCD 323). In the case of **Senanu v. SSNIT & Ors.** [2013-2015] 1 GLR 664 @ 674, the court held that:

*“The law is now settled that in all civil matters, per sections 11(1) and (4) and 12 of the Evidence Act, 1975 (NRCD 323, a plaintiff to an action succeeds on the balance of probabilities or on preponderance of probabilities. And even though it is the totality of the evidence that ought to be considered in arriving at this position, it is also necessary to bear in mind that the principle that the plaintiff will succeed on the strength of case is still good law, for what it means is that, once it is plaintiff that is asserting that he has certain rights and that the said rights were infringed upon, then he should be capable of producing enough, cogent and admissible evidence to prove that....”*

On the issue of damages, the Supreme Court in the case of **Royal Dutch Airlines v. Farmex Ltd** [1989-90] 2 GLR 623 stated that:

*“The principle adopted by the courts was restitutio in integrum, i.e., if the plaintiff has suffered damage not too remote, he must, as far as money could do it, be restored to the position he would have been in had that particular damage not occurred. What was required to put the plaintiffs in the position they would have been was sufficient money to compensate them for what they had lost”.*

In the case **Delmas Agency Ghana Ltd v. Food Distributors International Ltd** [2007/08] 2 SCGLR 748 the Supreme Court held in holding 3 as follows;

*“Special damages is distinct from general damages. General damages is such as the law will presume to be the natural or probable consequence of the defendant’s act. It arises by inference of the law and therefore need not be proved by evidence. The law implies general damage in every infringement of an absolute right. The catch is that only nominal damages are awarded. Where the Plaintiff has suffered a properly quantifiable loss, he must plead specifically his loss and prove it strictly. If he does not, he is not entitled to anything unless general damages are also appropriate”.*

The plaintiff testified that sometime in June 2017, the defendant approached him and requested to borrow an amount of Fourteen Thousand Ghana Cedis (GH¢14,000) to transact a business with the promise of paying back the principal by 14<sup>th</sup> July, 2017 and with a further promise to pay an interest of 20% of the principal amount by the said 14<sup>th</sup> July, 2023. Subsequently, he gave the defendant the amount requested with the assurance that he would repay the amount requested.

The plaintiff states that the defendant only paid an amount of Three Thousand Ghana Cedis (GH¢3,000) representing the agreed interest for the period up to 14<sup>th</sup> July, 2017 during which the principal was to be fully paid but failed to pay the principal

amount. Several attempts made for the defendant to pay the principal sum owed him have proved futile. Consequently, he instructed his lawyers to demand the amount owed from the defendant and the latter responded and promised to pay the principal sum not later than 28<sup>th</sup> February, 2023 and **Exhibit “A”** Series which are copies of the Demand letter and the commitment letter from the defendant herein. The defendant however failed and/or refused to honour his promise to pay the entire amount at the end of February 2023 as well as his promise to pay a minimum of Seven Thousand Ghana Cedis (GH¢7,000) by the same period in the event he had any challenges that prevented him from honouring his full payment obligations.

The plaintiff states that the defendant is deliberately refusing to pay the debt owed knowing well that the amount was long overdue and that he (plaintiff) wanted to invest the money into a fish pond business. He further says that after several unsuccessful calls and text messages to the defendant to pay the principal sum, he had to employ the services of a lawyer. He has attached and marked as **Exhibit “B”** Series, pictures of the WhatsApp chats with the defendant showing how desperate he has been for his money and the responses by the defendant. He further states that he had to pay the services of his lawyers to write these several demand letters to the Defendant which were apparently ignored. According to him, he has called the defendant several times informing him of his intentions for the money and the urgency of the money to do some businesses but the defendant remained adamant.

The plaintiff avers that it became very critical when he lost his job and needed the money to set up his personal business. Initially he got some people he wanted to partner with to set up a clothing business but could not because he kept promising

them based on the promises relayed to him by the defendant and overtime, they lost interest in pursuing the business with him. According to him, he has had to borrow money from friends and the bank just to meet some of his financial obligations and the defendant herein has shown no iota of compassion to at least settle some of the amount owed to him since 2017 till date, apart from the initial amount paid by the defendant as interest. He has also employed the services of lawyers to assist him to retrieve the amount owed by the defendant to him and he has already spent Seven Thousand Ghana Cedis (GH¢7,000) as filing fees and legal fees.

The plaintiff further says that as at the time he lent the Fourteen Thousand Ghana Cedis (GH¢14,000) to the defendant, he had given him all his savings believing that he would settle the amount the following month so that he could use same for a business he wanted to start at the time, only to be disappointed till date. The plaintiff says that the conduct of the defendant has caused him so much emotional stress and psychological trauma as he could not take care of his sick mother. According to the plaintiff, the defendant has breached the contract he had with him and has reneged on his payment obligations to him since July 2017, six years now. The plaintiff therefore prays the court for an amount of Thirty Thousand Ghana Cedis (GH¢30,000) as general damages for breach of contract and for the inconvenience caused him.

From the evidence led by the plaintiff, the fact that the defendant sought financial assistance from the plaintiff is not in dispute. The court has entered judgment in default on those reliefs. The plaintiff further says that he had to engage the services of lawyers to write demand letters to the defendant. Although the plaintiff has not

tendered the invoice of legal services, it is a natural consequence of the defendant's breach that the plaintiff will seek legal advice in an attempt to claim the debt owed. It is therefore appropriate that general damages are awarded against the defendant for the breach of the agreement between the parties. In the circumstances, the plaintiff is entitled to nominal damages in the sum of Two Thousand Ghana Cedis (GHC2,000).

The Court deferred the issue of costs until damages have been assessed. Based on the guiding principles on the award of cost under **Order 74** of the High Court Civil (Procedure) Rules, 2004(C.I.47), having regard to the nature of the case, the fact that it is default judgment with less complex issues and to compensate the plaintiff for reasonable expenses incurred, I will award costs of Four Thousand Ghana Cedis (GHC4,000) in favour of the plaintiff against the defendant.

**SGD.**

**H/H AGNES OPOKU-BARNIEH  
(CIRCUIT COURT JUDGE)**