

**IN THE DISTRICT COURT TDC TEMA HELD ON WEDNESDAY THE
26TH DAY OF APRIL 2023 BEFORE HER WORSHIP BENEDICTA
ANTWI (MRS) DISTRICT COURT MAGISTRATE**

SUIT NO: A2/78/21

MOHAMMED BAGGUDU PLAINTIFF

VRS

FRGITNOX COMPANY LTD DEFENDANT

JUDGMENT

BREIF FACTS

Plaintiff herein initiated this suit against the defendant company on the 17th May 2021 praying for the following reliefs;

- a. A declaration that the defendant is in breach of contract
- b. An order for the recovery of GH¢8,000.00 being the total amount due and payable monthly under the contract since 22nd August 2020.
- c. An order for the recovery of interest on the said sum
- d. An order for the recovery of special damages of GH¢ 28,330.00 being the total cost of repair of the trailer and replacement of its 12 tyres
- e. An order for the recovery of general damages for breach of contract
- f. Order as to cost
- g. Any other reliefs that this honorable court may deem fit.

The gravamen of plaintiff's claim is that on the 22nd April 2020, he entered into an agreement with defendant to hire plaintiff's trailer for a period of two months at a monthly sum of GH¢1000.00. the defendant paid the two months agreed amount but refused to return the trailer to the plaintiff.

For this reason, the parties agreed for the defendant to continue with the monthly payments for all the time trailer truck remained in their possession. Defendant thus made two additional monthly payments and thereon, the payments stopped. Plaintiff says he later discovered the trailer truck parked at a workshop at Nsawam with all its twelve (12) tires missing.

Procedural History of Suit:

The court deems it necessary to set out clearly the procedural history of this suit for the two reasons that; (1) this is an inherited docket and the (2) defendant absented himself from the hearing of the suit despite several hearing notices duly served on him.

After plaintiff's writ together with hearing notice for the 2/9/21 was served on defendant he did not show up in court. the court thus asked for another hearing notice to be served in him and adjourned the suit to 4/11/21.

Defendant still failed to show up in court despite being served with hearing notice, the court thus adjourned to the 7/1/22. That adjourned date throned out to be a holiday and the suit was adjourned off record to the 21/2/22. On that day both parties were absent and the court differently constituted struck out the suit for want of prosecution. On the 6th of April

2022, counsel for plaintiff was heard on an application for re-listment . the defendant's was represented in court that day and he informed that court that he was not opposed to the application. The court thus granted the application and ordered the defendant to file his statement of defence on or before the 14/4/22 and adjourned the suit to the 28th April 2022.

The defendant filed a process titled 'REPLY TO PLAINTIFF'S SUMMONS' on the 27/ 4/ 22.

The said process was signed by defendant company in which it stated that the plaintiff's trailer was involved in an accident at Nsawam and prayed for time to complete the repair work.

On the 28/4/22 when the suit came up for hearing, all the parties were absent but plaintiff was represented by counsel. the court thus adjourned to the 25/ 5/ 22 and ordered the plaintiff's lawyer to issue hearing notice on defendant with cost of GH¢ 300.00

On the adjourned date, the defendant's representative told the court that what he filed was his defence, the court thus ordered him to correct the said process to read "statement of defence" and sign by it. The parties were then referred to the court connected ADR to attempt amicable settlement and the matter was adjourned to the 27th June 2022.

On the adjourned date, plaintiff was present but the defendant was absent. The mediator returned a report to the court stating that the parties could not settle the matter. The court adjourned the matter again

to the 28th July 2022 and directed the plaintiff to issue hearing notice on the defendant with cost of GH¢ 300.00.

On the adjourned date, the plaintiff was present and defendant was absent. The plaintiff's lawyer prayed to the court to enter judgment on admission in favour of plaintiff as the defendant has admitted their claim in his statement of defence. The court differently constituted entered judgment in favour of plaintiff on their relief 'b' and 'c' with cost of GH¢800.00 and ordered the plaintiff to file witness statement for hearing on the remaining reliefs on the 26th August 2022.

The suit first came before me on the 28th November 2022 with both parties present. The parties were therefore ordered to file their respective witness statement for the hearing on the remaining reliefs. It was adjourned to the 19th January 2023. On the adjourned date, all the parties were in court and the court further adjourned the suit for defendant to comply with the orders of the court.

The suit was adjourned to the 1st March 2023 for hearing in the presence of both parties. Defendant refused to comply with the order of the court to file witness statements for trial. The court thus proceeded with the hearing and adjourned for judgment .

Burden of proof

The court is also mindful of one of the cardinal duties of a court in evaluating evidence led during trial which is for the court to assess all the evidence on record in order to determine in whose favour the balance of probabilities should lie. Some cases in point are **Adwubeng v. Domfeh**

[1996-97] SCGLR 660 and **Takoradi Flour Mills v. Samir Faris [2005-2006] SCGLR 882**. This principle was further reiterated by the Supreme Court in the case of **In re Presidential Election Petition (No. 4) Akuffo-Addo & Ors. Vs. Mahama & Ors. [2013] SCGLR (Special Edition) 73**, the Supreme Court held at page 322 of the report as follows:

"Our understanding of the rules in the Evidence Decree, 1975 on the burden of proof is that in assessing the balance of probabilities, all the evidence, be it that of the plaintiff, or the defendant, must be considered and the party in whose favour the balance tilts is the person whose case is the more probable of the rival versions and is deserving of a favourable verdict." [Emphasis mine.]

In **Okudzeto Ablakwa (No. 2) v. Attorney-General & Obetsebi-Lamprey (No. 2) [2012] 2 SCGLR 845**, the Supreme Court in dealing with the burden of proof held at page 867 of the report as follows:

"... he who asserts, assumes the onus of proof. The effect of that principle is the same as what has been codified in the Evidence Act, 1975 (NRCD 323), s 17(a)What this rule literally means is that if a person goes to Court to make an allegation, the onus is on him to lead evidence to prove that allegation, unless the allegation is admitted. If he fails to do that, the ruling on that allegation will go against him. Stated more explicitly, a party cannot win a case in Court if the case is based on an allegation which he fails to prove or establish."

Section 11 (4) of the Evidence Act, 1975 (Act 323) provides that:

(4) in other circumstances the burden of producing evidence requires a party to produce sufficient evidence so that on all the evidence a reasonable mind could conclude that the existence of the fact was more probable than its none-existence.

Failure by a party to lead sufficient evidence in support of his claim will thus lead to the claim being dismissed.

The court will therefore evaluate the totality of the evidence in light of the above guiding provisions.

Since the court differently constituted has already granted judgment on admission in favour of plaintiff on reliefs (b) and (c) the remaining reliefs for determination are reliefs a, d, e, f, and g.

Plaintiff testified on the 1st March 2023 by relying on his witness statement as his evidence in chief. He tendered exhibits A, B, C, and D in support of his claim.

Exhibit "A" is the hand written agreement parties dated 22nd April 2020.

Exhibit "B" a photograph of the damaged trailer.

Exhibit "c" copy of the estimated cost of repair

Exhibit "D" response to plaintiff's demand letter signed by defendant's managing Director.

Relief A & E – Declaration that the Defendant is in breach of contract / An order for recovery of damages for breach of contract.

From defendants reply based on which the court granted the judgement on admission, he admitted in paragraph 3 that he hired plaintiff's trailer to attach to his truck for the conveyance of goods. He further admitted that the truck was damaged due to an accident with occurred on the Nsawam road and prayed the court to grant him time pay the plaintiff for duration the trailer has been in his possession. From the evidence in chief of plaintiff and exhibit 'A', the initial agreement was for a duration of two months with a further extension, thus when it became apparent to the defendant company that he could not fulfill his part of the agreement, he was to inform the plaintiff of the supposed accident or renegotiate further business terms.

However it was only after plaintiff caused his lawyers to write formally to the defendant that he acknowledged his default through exhibit "D". Since the defendant has already admitted his default to the agreement the court finds that defendant is in breach of the contract agreement entered into by the parties and makes a declaration of same to that effect. Having declared that defendant is in breach of his contractual obligations to the plaintiff, the court hereby orders that defendant bears the total cost of the repair of the trailer to bring it back to the state it was at the time the parties entered into the contract within thirty days from today. The court will award general damages in the sum of GH¢ 5000.00 in favour of plaintiff

Relief D – An order for the recovery of special damages of GH¢ 28,330.00 being the total cost repair of the trailer and replacement of 12 tires.

In paragraph 10 of plaintiff's witness statement, he stated that the sum of GH¢ 24,000.00 is the cost of tires for the trailer at GH¢ 2000.00 each. And the estimated cost of repair of 4,330 plus GH¢1000 being the agreed monthly sum for the period the truck has remained in the possession of the defendant. The plaintiff only tendered exhibit "C" which is an estimate of the sum of GH¢ 4,330 from Total Ghana.

Unlike general damages which are at large, special damages must be specifically pleaded, particularized and proved. The plaintiff, having claimed the stated amount in relief (d) as special damages should have specifically pleaded same in his statement of claim and led sufficient evidence to show the court as to how he arrived at that amount. Only exhibit "c" was tendered to show the estimated cost of repairs. There is no evidence to support the claim of GH¢24,000.00.

Consequently relief (d) is granted in part. Defendant is ordered to pay the sum of GH¢ 4,330.00 to plaintiff as cost of repair work to the trailer.

Final orders

Flowing from the above, I make these final orders in favour of the plaintiff.

1. Defendant is ordered to bear the full and complete repair of the trailer to bring to bring it back to the state it was when the parties entered into the contract on the 22nd April 2020.
2. Defendant is ordered to pay the sum of GH¢ 1000.00 per month being the agreed monthly sum the parties agreed to be paid to the plaintiff every month for the hire of the trailer from October 2020 to the date the defendant hands over the repaired trailer back to the plaintiff.
3. I award GH¢ 5000.00 as general damages in favour of plaintiff.
4. Reliefs f and g are dismissed as the court already granted plaintiff cost when it entered judgment on admission in his favour on the 28th July 2022

[SGD]
BENEDICTA ANTWI (MRS)
DISTRICT MAGISTRATE

COUNSEL:

NICHOLAS K. APPIAH FOR PLAINTFF ...ABSENT

PARTIES:

PLAINTIFF ... PRESENT

DEFENDANT ... ABSENT