

**IN THE DISTRICT COURT 2, TAMALE  
HELD ON MONDAY 27<sup>TH</sup> NOVEMBER, 2023  
BEFORE HIS WORSHIP D. ANNAN ESQ.**

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**SUIT NO. A2/81/23**

**BETWEEN**

**PRIMETECH GHANA LIMITED**

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**PLAINTIFF**

**AND**

**MOHAMMED ZAKARIA**

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**DEFENDANT**

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**JUDGMENT**

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**INTRODUCTION**

1. This judgment relates to commercial contract.
  
2. On 19<sup>th</sup> July, 2023 the plaintiff through his counsel instituted this present action against the defendant. The plaintiff is a limited liability company registered under the laws of Ghana with its head office at Tamale and deals in the sale and distribution of baking (bread) flour. Defendant is a businessman trading under the name and style of Zakman Mixing Center which also deals in selling of baking flour.

3. Plaintiff company seeks from the defendant the following reliefs:
  - “a. Recovery of an amount of GHS56,000.00 being current market price of the remaining 80bags of baking flour that plaintiff supplied to defendant on credit at the request of the defendant but has since failed to pay.
  - b. Interest on the said amount at the prevailing bank rate till the final date of payment.
  - c. Damages for breach of contract.
  - d. Costs including solicitor’s fees.
  - e. Any other relief(s) that this Honourable Court deems fit.”
4. On 6<sup>th</sup> September, 2023 the defendant pleaded liable in part. Hence, this court entered judgment on admission in favour of the plaintiff for the recovery of GHS44,000.00 for the unpaid supply of baking flour since 24<sup>th</sup> March, 2022. The outstanding amount of GHS12,000.00 to be determined at trial, and the other ancillary reliefs so determined. The defendant was given 2months, i.e. by 6<sup>th</sup> November, 2023 to pay the said judgment debt.
5. Parties were directed to file their witness statements. Plaintiff did, but the defendant failed despite repeated orders. The court was left with no option than to hear the defendant viva-voce. Below are the cases of either party.

#### PLAINTIFF’S CASE

6. Mr. Mubarak Sumalia, Chief Executive, testified for and on behalf of the plaintiff company. According to him, on 24<sup>th</sup> March, 2022 the defendant requested for 100bags of baking flour at the unit price of GHS300.00, thus amounting to GHS30,000.00. The defendant was to pay within 3weeks, but he failed to pay. Upon repeated demands,

the defendant made part payment of GHS6,000.00, thus constituting 20bags. Thereafter, the defendant ceased payment. According to plaintiff witness, the price of baking flour has increased from GH300.00 to GHS600.00. Hence, plaintiff company caused a demand notice to be served on the defendant for the recovery of GHS48,000.00 being the current market price of the baking flour or the return of 80bags of baking flour. Nonetheless, the defendant has neglected, refused and failed to pay.

7. According to plaintiff's witness, at the time of filing this suit the unit price of baking flour had increased to GHS700.00, hence the outstanding amount for the 80bags stood at GHS56,000.00. Plaintiff's witness maintained that the defendant is yet to pay the current price of the 80bags or the return of same.
8. Plaintiff's witness tendered in evidence Exhibit A, being a copy of plaintiff's Certificate to Commence Business and Exhibit B being a copy of the Demand Notice.

#### DEFENDANT'S CASE

9. Defendant, on his part, stated as follows, "I made payment of 40bags to the plaintiff and made subsequent payment of GHS6,000.00 in 3 different installments, representing 20bags each. Plaintiff reported to me that he had received same, but came back to me in 3days time that he did not receive anything. Plaintiff then informed me to go to the CID office to report the issue. When we got there, I narrated the payment to the CID. The CID then asked me to pay GHS500.00 to go to court and to MTN to conduct investigations on my payment. Three days later defendant sent his worker to come and collect an additional GHS200.00 to be given to the CID. The money on me was GHS150.00 so I informed the plaintiff and gave same to the plaintiff's worker. Two weeks later, plaintiff reported the issue to a different CID, who invited me. I took

my brother and went to see the CID. The new CID did his investigations and took us to the mobile money vender where I paid the monies. After which the CID informed me that he would call me in 5days time. But from then up till date, I have not heard from the CID. That is all”.

## Defendant's Witness

10. The defendant called a witness, Nurudeen Zakaria (DW1). According to DW1, he was the one who paid the GHS18,000.00 (thus GHS6,000.00 on three different dates) via mobile money to the plaintiff. He indicated that it was the defendant who gave him the plaintiff's mobile money number for the payments.

## ISSUE TO BE DETERMINED

11. The issue borne out of the facts is *whether or not the defendant is indebted to the plaintiff company for the 80bags of baking (bread) flour at current market price?*

## BURDEN OF PROOF

12. In civil cases, the general rule is that the party who in his pleadings or his writ raises issues essential to the success of his case assumes the onus of proof on the balance of probabilities. See the cases of **Faibi v State Hotels Corporation [1968] GLR 471** and **In re Ashalley Botwe Lands; Adjetey Agbosu & Ors. v. Kotey & Ors. [2003-2004] SCGLR 420**. The Evidence Act, 1975 (NRCD 323) uses the expression "burden of persuasion" and in section 14 that expression has been defined as relating to, "...each fact the existence or non-existence of which is essential to the claim or defence he is asserting." See also ss. 11(4) and 12(1) & (2) of NRCD 323.
13. It is when the claimant has established an assertion on the preponderance of probabilities that the burden shifts onto the other party, failing which an unfavourable ruling will be made against him, see s. 14 of NRCD 323 and the case of **Ababio v Akwasi III [1995-1996] GBR 774**.

## ANALYSIS OF THE ISSUE

14. As noted earlier, the only issue herein is *whether or not the defendant is indebted to the plaintiff company for the 80bags of baking (bread) flour at current market price?* The law requires that he who asserts must prove. In the case **Okudzeto Ablakwa (No. 2) v. Attorney-General & Obetsebi-Lamphey (No. 2) [2012] 2 SCGLR 845**, the Supreme Court in dealing with the onus of proof of an allegation held at page 867 as follows: “...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.” See also the often cited case of **Majolagbe v. Larbi [1959] GLR 190** per Ollennu J (as he then was) where the court held that, “[w]here a party makes an averment capable of proof in some positive way, e.g. by producing documents, description of things, reference to other facts, instances, or circumstances, and his averment is denied, he does not prove it by merely going into the witness box and repeating that averment on oath, or having it repeated on oath by his witness. He proves it by producing other evidence of facts and circumstances, from which the Court can be satisfied that what he avers is true”.
15. Hence, the onus is on the plaintiff company to prove that the defendant owes it 80bags of baking (bread) flour at the current market price, else an unfavourable ruling will be entered against him, see also **Ababio v Akwasi III (supra)**.
16. Before I proceed, I must state here that the defendant had earlier admitted that he owed the plaintiff company GHS44,000.00 to which this court entered judgment on admission in favour of the plaintiff company. However, during the trial, the defendant unbendingly maintained that he did not owe the plaintiff company any money. Due to the defendant’s unyielding attitude, I shall consider the full evidence in determining this matter once and for all.

17. According to the plaintiff company, on 24<sup>th</sup> March, 2022 the defendant requested for 100bags of baking flour at the unit price of GHS300.00, thus amounting to GHS30,000.00. The defendant was to pay within 3weeks, but he failed to pay. Upon repeated demands the defendant made part payment of GHS6,000.00, thus constituting 20bags. Thereafter, the defendant ceased further payment. Plaintiff company added that the unit price of baking flour increased from GH300.00 to GHS600.00. It then caused a demand notice to be served on the defendant for the recovery of GHS48,000.00 being the current market price of the baking flour or the return of 80bags of baking flour. Nonetheless, the defendant has neglected, refused and failed to pay. Plaintiff company, at the time of filing this suit, stated that the unit price of baking flour has increased to GHS700.00, hence the outstanding amount for the 80bags stood at GHS56,000.00. It maintains that defendant is yet to pay the said GHS56,000.00 or return of the 80bags of baking flour.

18. Defendant, on his part, argued that he has paid the full sum. He argued that he initially paid GHS12,000.00 for the first 40bags. Later he paid GHS6,000.00 on three different installments for the remaining 60bags (totaling GHS18,000.00). Under cross-examination, he indicated that he paid the initial amount via cash and the other payments via mobile money.

19. Below is what ensued when defendant was under cross-examination:

“Q: You agree with me that you did business with the plaintiff?

A: Yes.

Q: After you request, he supplied you 100bags of baking flour?

A: Yes.

Q: In fact, in all your dealings with the plaintiff you have always paid by cash, but not through mobile money, before this issue?

A: That is so.

Q: In fact when plaintiff supplied you with the 100bags, you were to pay within 3weeks?

A: That is so.

...

Q: When the 3weeks elapsed, the plaintiff demanded for his money from you?

A: Yes and I gave him money for 40bags.

...

Q: You remember telling the plaintiff that you sent money to MTN mobile number?

A: That was after the payment of the 40bags i.e. the GHS12,000.00 I made payment of the 60bags in 20bags installments.

...

Q: I am putting it to you that you only paid GHS4,000.00 to the plaintiff at your shop when plaintiff demanded for the money?

A: It was not GHS4,000.00, it was GHS12,000.00.



Q: You again paid GHS2,000.00 at the police station when this case was reported?

A: Yes.

Q: So the two payments sums up to the GHS6,000.00 being the cost of 20bags?

A: I made 2 separate payments to the CID, first the GHS2,000.00 and second the GHS150.00.

...

*B/C: What is the mobile money number you claim you paid the money into?*

*A: The number is with my witness.*

20. Also, this is what DW1 stated when asked about the mobile money number:

*“Q: You never sent any mobile money to the plaintiff as you claim, I am putting it to you?”*

*A: It was the defendant who asked me to pay money to the plaintiff and that is what I did.*

*Q: What is the mobile money number you claim you paid into?*

*A: I do not know the number off head, but I gave it to the CID.*

*Q: That number is not the plaintiff's number?*

A: *What I know the defendant asked me to send the money to that number, so I believe that is the plaintiff's number.*

Q: *Did you confirm the name at the vendor when you were about sending the money?*

A: *The name on the number was Victor Agogo Mensah.*

Q: *Do you know the plaintiff's representative's name?*

A: *Yes.*

Q: *His name is Mubarik Sumaila, right?*

A: *That is so."*

21. From the evidence, first, I find that the defendant did not pay GHS12,000.00 representing the initial 40bags of baking (bread) flour. Defendant admitted paying GHS2,000.00 to the plaintiff's representative at the police station. This the plaintiff stated that that payment together with the initial GHS4,000.00 made it GHS6,000.00 for the 20bags. Now, if indeed defendant had paid all the money, why pay GHS2,000.00 at the police station? Secondly, I find that the defendant has not paid for the outstanding 80bags. The fact is that if he had paid for the 80bags via mobile money, the onus was on him to prove same, since the plaintiff was disputing it, see **Ababio v Akwasi III (supra)**. If defendant had paid via mobile money, he could have urged the police or this court for disclosures on the mobile money number. However,

neither he nor his witness was able to tell the mobile money number to which the money was paid into. I, therefore, find the actions of the defendant as a mere attempt to avoid payment of the plaintiff's debt. He cooked-up this story to stray the police. He never bothered to follow up with the police or made any attempt in proving the mobile payments. He simply went to sleep, after alleging that he had paid. Yet, he wants this court to buy into this story. Unfortunately for him, this cooked-up story will not stand in this court.

## CONCLUSION

22. In effect, I hereby find that plaintiff has proved its case on the preponderance of probabilities to which a favourable judgment shall be entered in its favour. Accordingly, the plaintiff company is entitled:

- a. Recovery of the current market price of the remaining 80bags of baking (bread) flour that plaintiff supplied to defendant but defendant has failed to pay or returned the 80bags of baking (bread) flour.
- b. Since the defendant is to pay for the 80bags of baking (bread) flour at the current market price, there will be no need to order for the payment of interest. The claim for current price puts the plaintiff company in restitution. Moreso, the unit price of baking flour can be ascertained at any given time in satisfaction of the judgment debt.
- c. Damages for breach of contract is assessed at GHS5,000.00
- d. Costs including solicitor's fees is also assessed at GHS5,000.00.

**H/W D. ANNAN ESQ.**

**[MAGISTRATE]**

ABRAHAM N. DAMTAR ESQ., HOLDING THE BRIEF OF ALHAJI M. S.  
ABBDULLAH ESQ., FOR THE PLAINTIFF  
DEFENDANT APPEARED IN PERSON

References:

1. ss. 11(4) and 12(1) and (2) of Evidence Act, 1975 (NRCD 323).
2. *Faibi v State Hotels Corporation* [1968] GLR 471
3. *In re Ashalley Botwe Lands; Adjetey Agbosu & Ors. v. Kotey & Ors.* [2003-2004] SCGLR 420
4. *Ababio v Akwasi III* [1995-1996] GBR 774
5. *Okudzeto Ablakwa (No. 2) v. Attorney-General & Obetsebi-Lamptey (No. 2)* [2012] 2 SCGLR 845
6. *Majolagbe v. Larbi* [1959] GLR 190