

**IN THE DISTRICT COURT 2, TAMALE
HELD ON THURSDAY 30TH NOVEMBER, 2023
BEFORE HIS WORSHIP D. ANNAN ESQ.**

SUIT NO. A2/92/23

BETWEEN

SININ MOHAMMED & ANOR.

-

PLAINTIFFS

AND

MR. ABDUL-JALIL NAABELI MUSAH

-

DEFENDANT

JUDGMENT

INTRODUCTION

1. Before I proceed with this matter, Cyril Adams Esq. announced himself as holding the brief of Halid Abdul-Rauf Esq. as counsel for the defendant. Defendant was also in court. Counsel for defendant, despite announcing himself, did not move the court regarding arresting this judgment. Hence, I shall proceed with the judgment.

2. On 13th September, 2023 the plaintiffs through their counsel instituted this present action against the defendant. The plaintiffs are students and reside in Tamale. The defendant is the Organizer and Event Coordinator for Miss Damba pageantry.
3. Plaintiffs seek from the defendant the following reliefs:
 - “a. Recovery of an amount of GHS15,744.00.
 - b. Interest on the said amount at the prevailing bank rate from November 2022 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. Upon due service on the defendant, he engaged the service of a lawyer who filed Appointment of Solicitor on 3rd October, 2023. However, neither the defendant nor his lawyer attended court or filed any process in respect of plaintiffs’ claim. I shall deal with the effect of the non-attendance in court or failure to file any process by the defendant later in this judgment.
5. The court heard the plaintiffs’ case viva-voce.

PLAINTIFFS’ CASE

6. Abubakari Abdul-Basit, the 2nd plaintiff, testified for himself and on behalf of the 1st plaintiff. He stated that, “He (defendant) organised a pageant for the ladies in the north. The 1st plaintiff took part. I was the team leader who solicited for funds to vote for the 1st plaintiff. At the end of the programme held at Radaych Hotel, there was a disagreement between the participants and the organisers. So they called us into a meeting. During the meeting, the defendant came out with an undertaking indicating

that there were some votes which came into their system after the time they indicated to block their system to allow further votes. Defendant indicated that the extra votes which came after the block will be removed so that they will convert it into cash and pay to the participants. So he set a date to pay the funds to us.”

7. 2nd plaintiff added that they were expected to be paid by 15th November, 2022, but the defendant has failed to pay. He tendered in evidence copy of the said undertaking as Exhibit A.

DEFENDANT’S CASE

8. As earlier indicated, neither the defendant nor his lawyer attended court or filed any process in respect of plaintiffs’ claim.

ISSUE TO BE DETERMINED

9. The issue borne out of the facts is *whether or not the plaintiffs are entitled to GHS15,744.00 being the value of excess votes casted in favour of the 1st plaintiff?*

BURDEN OF PROOF

10. 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.

11. 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

12. As note earlier, the only issue herein is *whether or not the plaintiffs are entitled to GHS15,744.00 being the value of excess votes casted in favour of the 1st plaintiff?*

13. The law regarding the defendant's inaction is that where a party fails to appear in court after due service on him, he is said to have deliberately failed to take advantage of the opportunity given him to be heard. The *audi alteram partem* rule cannot be said to have been breached. The court is entitled to proceed with the trial to conclusion and make deductions, draw conclusions or make findings on the basis of the evidence adduced at the trial, see the cases of **In re West Coast Dyeing Industry Limited: Adams v Tandoh [1984-86] 2 GLR 561, CA** and **Ankumah v. City Investment Co. Ltd. [2007-2008] 1 SCGLR 1068**. See also the case of **Republic v. High Court (Fast Track Division); Ex-parte State Housing Co. Ltd. (No. 2) Koranten-Amoako Interested Party, [2009] SCGLR 185** where Wood JSC (as she then was) stated authoritatively at page 190 as follows:-

“A party who disables himself or herself from being heard in any proceedings cannot later turn round and accuse an adjudicator of having breached the rules of natural justice.”

14. The law requires that he who asserts must prove. In the case **Okudzeto Ablakwa (No. 2) v. Attorney-General & Obetsebi-Lamprey (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 Ollenu J (as he then was) where the court held that, “...*He proves it by producing other evidence of facts and circumstances, from which the Court can be satisfied that what he avers is true*”. *Emphasis mine.*

15. Having heard the plaintiffs under oath and without any challenge from the defendant, I shall proceed as appropriate, see **Ex-parte State Housing Co. Ltd. (No. 2) (supra)**. I note also that since there was no challenge by the defendant, the weight of the evidence, without cross-examination, is against the defendant, see the case of **TUI UK Ltd v Griffiths [2023] UKSC 48** (delivered on 29/11/23).

16. From the plaintiffs’ statement of claim, the cost for each vote was Fifty Ghana Pesewas (50p). Also, plaintiffs stated that 1st plaintiff pulled a total of 100,934votes. However, out of the 100,934votes, 30,744votes came after the block (around 1:50am). The value of the excess votes rather is GHS15,372.00 but not GHS15,744.00 as stated by the plaintiffs. Plaintiffs contend that the defendant is required to pay the said GHS15,372.00 as per the undertaking, Exhibit A.

17. Exhibit A, stipulates:

“UNDERTAKING

All parties agreed to the records behind this undertaking. It was agreed that all votes that came after 1:50am should be nullified. This time was for October 30, 2022. It was further agreed that the nullified votes in amount of money should be

refunded to the candidate to whom the votes were given. The said monies should be refunded on or before November 15, 2022.

It must be noted that all representatives were given the opportunity to raise any concerns before the auditing of the votes on the day.

This was signed by representative of the contestants in the studios of Zaa TV in Tamale on October 30, 2022

| <u>Name</u> | <u>For</u> | <u>Signature</u> |
|--|------------|------------------|
| 1. Nabila Dokurugu | Tolon | Signed |
| 2. Hon. Ibrahim Mohammed | Tolon | Signed |
| 3. Abubakari Abdul-Basit Brabia Karaga | | Signed |
| 4. Alhassan Hamza | Karaga | Signed |
| 5. Mohammed Alhassan | Savelugu | Signed |
| 6. Ahmed-Mukadas Ibn-Salis | Savelugu | Signed |

| <u>Event Coordinator</u> | <u>Signature</u> |
|---------------------------|------------------|
| Abdul-Jalil Naabeli Musah | Signed" |

18. From the above, I find that the plaintiffs have been able to provide facts and circumstances to which this court is satisfied that they are entitled to their claim, see **Majolagbe v. Larbi (supra)**. From the evidence, 1st plaintiff pulled a total of 100,934 votes. However, out of the 100,934 votes, 30,744 votes came after the block around 1:50am. The 30,744 votes is valued at GHS15,372.00. It is clear from Exhibit A, that the defendant undertook to convert the nullified votes into cash and same refunded to the contestants/candidates to whom the votes were given. Lastly, the

weight of the evidence, without cross-examination, is against the defendant, see the recent cases of **TUI UK Ltd v Griffiths (supra)**.

CONCLUSION

19. In effect, I hereby enter judgment in favour of the plaintiffs as follows:

- a. Recovery of the amount of GHS15,372.00 being the value of excess votes casted in favour of the 1st plaintiffs.
- b. Interest on the said amount at the prevailing bank rate from 15th November 2022 till the final date of payment.
- c. Damages for breach of contract assessed at GHS3,000.00
- d. Costs assessed at GHS2,000.00.

H/W D. ANNAN ESQ.

[MAGISTRATE]

ABRAHAM N. DAMTAR ESQ., HOLDING THE BRIEF OF ALHAJI M. S. ABDULLAH ESQ., FOR THE PLAINTIFFS

CYRIL ADAM ESQ. HOLDING THE BRIEF OF HALID ABDUL-RAUF ESQ., FOR THE DEFENDANT

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-Lampsey (No. 2)* [2012] 2 SCGLR 845
6. *Majolagbe v. Larbi* [1959] GLR 190
7. *TUI UK Ltd v Griffiths* [2023] UKSC