

**IN THE DISTRICT COURT TDC TEMA HELD ON WEDNESDAY THE  
19<sup>TH</sup> DAY OF JULY 2023 BEFORE HER WORSHIP BENEDICTA  
ANTWI (MRS) DISTRICT COURT MAGISTRATE**

---

**SUIT NO: A2/50/22**

**ESCORT SECURITY SERVICE  
SUIING PER LAWFUL ATTORNEY  
(GLOBAL DEBT TRACKERS)**

**.... PLAINTIFF**

**VRS**

**ZONDA TECH GH LTD**

**.... DEFENDANT**

---

**JUDGMENT**

---

**BRIEF FACT**

On the 14<sup>th</sup> April 2022 plaintiff's attorney initiated this suit against the defendant praying for the following reliefs;

- a) An order for the recovery of thirty-six thousand one hundred and five Ghana cedis forty-four pesewas (GH¢36,105.44) being defendants indebtedness to plaintiff as a result of Security services plaintiff provided for the defendant.*
  
- b) Interest on the said amount in relief (a) at the prevailing commercial rate from 22<sup>nd</sup> January 2022 till date of final payment.*
  
- c) Cost including legal fees.*

The affidavit in support of the claim deposed to by one Alfred Nartey - Agbo stated that the plaintiff is a limited liability company incorporated under the laws of Ghana and offers services including security services. The defendant which operates as a pharmacy was one of the clients of plaintiff. The parties signed an agreement on the 31<sup>st</sup> August 2018 for plaintiff to provide the services of security personnel and guarding services for defendant at GH¢800.00 for a day guard and GH¢ 950.00 per night guard payable at the end of each month. As at 2020, the defendants outstanding bill stood at GH¢ 205,060.25. The defendant made part payment of GH¢168,954.81 and has refused to settle the outstanding sum of GH¢ 36,105.44.

The plaintiff prayed the suit to be placed on the undefended list and complied with all the requirements under order 8 of C.I.59

The hearing notice attached to the writ was for the 1<sup>st</sup> of June 2022

The writ was served on the defendant through one Bridget Nyasorgbor the receptionist on the 12<sup>th</sup> May 2022.

### **PLAINTIFF'S CASE**

Plaintiff provided security service for defendant at defendant's request at a total service fee two hundred and five thousand, and sixty Ghana cedis twenty-five pesewas (GH¢ 205,060.25).

That plaintiff made part payment of one GH¢ 168,954.81 leaving a balance of GH¢ 36,105.44 and believes unless compelled by the court defendant will not pay.

On the 9<sup>th</sup> February 2023 plaintiff's attorney testified by relying on the witness statement filed on the 8<sup>th</sup> August 2022 by one Michael Agyarko a court clerk of plaintiff's lawful attorney. He repeated the depositions contained in plaintiff's affidavit and attached the following exhibit;

*Exhibit "A" copy of Power of Attorney from plaintiff to the lawful attorney.*

The court thereafter adjourned the trial on four occasions amid service of hearing notices on the defendant to cross-examine the plaintiff to no avail. On the 17<sup>th</sup> May 2023, the plaintiff was discharged and PW1 was put in the box. He relied on his witness statement filed on the 8<sup>th</sup> August 2022 and tendered the following exhibits;

*Exhibit "B" -- a copy of agreement for provision of security services.*

*Exhibit "C" – a copy of invoice*

*Exhibit "D" a copy of response to service agreement*

*Exhibit "E" a copy of response to security service agreement dated 5<sup>th</sup> November 2019*

PW1 is the zonal supervisor of plaintiff and testified that the defendant signed an agreement with plaintiff for the services of security personnel from the 13<sup>th</sup> March 2018 to 22<sup>nd</sup> January 2020 as per exhibit "B" . defendant's indebtedness stood at GH¢ 168,954.81 and they made part-payment of GH¢ 168,954.81 with a balance of GH¢ 36,105.44 .

That sometime in October 2018 the defendant made a complaint about two of the security personnel and the plaintiff replaced them

There was no cross examination and the witness was discharged.

**Defendant's affidavit in opposition.**

Defendant filed an affidavit in opposition on the 17-6-22 that in the agreement reached by the parties and signed on the 31<sup>st</sup> March 2018, the plaintiff agreed to indemnify the defendant for any theft, damages, loss among others occurring on the premises of defendant as a result of the negligence of the plaintiff's employee. He attached exhibits 1, 2,3,4,5 as a copy of a complaints defendant made to plaintiff about the conduct of plaintiff's employees.

Exhibit 1 is the agreement for the provision of security services dated 31<sup>st</sup> March 2018 between Escort Security and Zonda Tech

Exhibit 2 letter from defendant to plaintiff titled "General Concern" dated 13<sup>th</sup> August 2018

Exhibit 3 letter from defendant to plaintiff dated September 7 2018

Exhibit 4 letter defendant to the commercial manager of plaintiff dated 30<sup>th</sup> October 2019

Exhibit 5 letter from defendant to plaintiff dated 11<sup>th</sup> November 2019

Exhibit 6 - letter from plaintiff to human resource manager of defendant dated 13<sup>th</sup> November 2019

The security personnel deployed by plaintiff also engaged in bloody fights with the staff of defendant causing a hostile work environment for defendant which also contributed to driving away potential clients. defendant then stated in paragraph 12 that the conduct of the plaintiff staff estopped them from making any claims and will prove same at the trial.

Defendant deposed that the negligence of plaintiff led to the loss of items amounting to GH¢ 45,000 and that since the plaintiff per exhibit 1 agreed to indemnify the defendant, they plead to set off the claims of plaintiff against the loss directly caused by the plaintiff.

However, defendant did not show up during the trial despite several hearing notices duly served on them. The witness statement filed by defendant is therefore struck out as same was never tendered and admitted into evidence.

## **BURDEN OF PROOF**

In every civil suit, the person who asserts usually has the burden of proving same on a preponderance of probabilities. Preponderance of probabilities, according to section 12(2) of the Evidence Act, 1975 (NRCD 323) means:

*"... that 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 than its non-existence.**"*

Where the plaintiff has been able to lead sufficient evidence in support of his case, then it behoves upon the defendant to lead sufficient evidence in rebuttal, otherwise the defendant risks being ruled against on that issue or issues. Under Section 11(4) of NRCDC 323, a party discharges the burden of producing evidence when the party produces “... *sufficient evidence so that on all the evidence a reasonable mind could conclude that the existence of the fact was more probable than its non-existence*”.

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 (NRCDC 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.”*

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 ***In re Presidential Election Petition (No. 4) Akufo-***

***Addo & Ors. v. Mahama & Ors. [2013] SCGLR (Special Edition)***

**73**, where 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."*

In the case of **Faibi vrs State Hotels Corporation (1968) GLR 471** it was held that:

*" the onus in law lay upon the party who would lose if no evidence was led in the case; and where some evidence had been led it lay on the party who would lose if no further evidence was led"*

## **ISSUES**

After close of case, the issues to be determined by the court as distilled from the pleadings are as follows;

1. Whether or not the defendant is entitled to the defence of set-off.
2. Whether or not the plaintiff is entitled to the recovery the sum of 36,105.44 with interest.

## **ANALYSIS**

The plaintiff's claim for the reliefs endorsed on his writ is based on the existence of a contract entered into by the parties and tendered into evidence as exhibit "B" . this being a civil action, the burden of proof is

thus on the plaintiff to prove on a preponderance of probability that the defendant is indebted to him in the sum as claimed on the writ.

The latin maxim "*semper necessitas probandi incumbit ei qui agit*" which means ( the necessity of proof always lies with the person who lays the charges" ) applies. This maxim has been given statutory blessing in section 11(1) and 17 of the Evidence Act (1975) ACT 323.

The plaintiff prayed per paragraph 8 of his affidavit in support of the writ for the suit to be placed on the undefended list after duly complying with the requirements under order 8 of the District Court Rules, C.I. 59

*Order 8 rule 3 of C.I. 59* provides that a party served with a writ of summons and affidavit together with the supporting documents who wish to defend the action shall not less than 5 days before the date fixed for the hearing, file an affidavit together with documents which support that party's defense setting out the grounds of defense.

*Rule 6 of order 8* further states that where the defendant fails to deliver the affidavit under rule 3 but subsequently files an affidavit which (a) discloses a defense on the merits, and (b) satisfactorily explains why the affidavit was not delivered, the court may at any time before judgment is entered permit the defendant to defend the action on terms that the court considers just. *Rule 7* further provides that where a defendant fails to deliver the affidavit under rule 3 and the defendant is not permitted to defend in accordance with the provisions of rule 6, the court shall deal



with the suit as an undefended suit and give judgment without calling on the plaintiff to summon witnesses to prove the plaintiff's case formally.

From the record of proceedings, the writ was served on the plaintiff on the 12<sup>th</sup> May 2022. The defendant had not less than five (5) days from the date of service to file his notice of intention to defend the suit in accordance with order 8 (3) *supra* .

The defendant on his first appearance before the court differently constituted, was however given time to file his affidavit in opposition on or before the 10/6/22, he failed to comply with same and rather sought for more time to attempt settlement with the plaintiff on the next adjourned date. The defendant subsequently filed his affidavit in opposition without any leave from the court as required by order 8 rule 6 on the 17<sup>th</sup> June 2022.

In the said affidavit in opposition, defendant stated in paragraph 10 as follows;

*"that the negligence of the Plaintiff's employees led to the loss of items on the Defendant's premises which have been estimated to cost GH¢ 45,000. That in view of the fact that the plaintiff agreed to indemnify the Defendant against losses (per exhibit 1) caused by the negligence of its employees, the defendant will set off plaintiff's claim against the loss directly caused by the plaintiffs."*

The defence of set-off has been provided for in the District Court rules under *order 18 rule 13 of C.I. 59* as follows;

***"Set-off or counterclaim to be pleaded***

*13. Where a defendant seeks to rely on any fact, which supports a right of set-off or counterclaim, the defendant shall in the statement of defence, state specifically that the defendant does so by way of set-off or counterclaim, and give the particulars of the set-off or counterclaim."*

The court has reviewed the said exhibit "1" attached to the affidavit in opposition and this is what the Court found at page 3 of the agreement between the parties;

**"paragraph 8: the service provider shall indemnify the court for any theft, loss or damage resulting from the negligence of the employees or guards of the service provider assigned to provide the services stated herein, and the said indemnity shall not exceed 5 months' worth of the charges payable by the client to the service provider under this agreement upon proof of the loss.**

**9. The service provider shall not be held liable for damages and/ or losses arising from any force majeure, or armed robbery.**

**10. The Service Provider shall not be held responsible to indemnify the client for any theft, loss or damage to the Client's property or interest occasioned by the employees, agents, or dependents of the Client after proof of same by investigation."**

The court has considered all the exhibits attached to defendants affidavit and finds that nowhere in the exhibit 1-5 did the defendant state the loss of items estimated at GH¢ 45,000 to the defendant. The deposition in paragraph 10 of the affidavit in opposition was never stated in any of the exhibits attached to the affidavit. Exhibit "6" is the only letter plaintiff

wrote to defendant on the complaints made about the work ethics of plaintiff's security. In exhibit 6, the plaintiff only apologized for the security lapses and informed the defendant of the new measures put in place to satisfy the service agreement.

The defendant who sought to rely on the defence of set-off thus had the onus of adducing enough evidence to persuade the court to make a decision in its favour. However, defendant failed to participate in the trial and the court on the authority of **Faibi vrs State Hotels Corporation** *supra* finds that the defendant could not discharge the burden on him to prove the claim of set-off in his defence.

Flowing from above, the court finds the defendant failed to canvass the defence of set-off as he did not particularize same. Consequently, the plea of set-off fails.

**Whether or not the plaintiff is entitled to the recovery the sum of GH¢ 36,105.44 with interest.**

The plaintiff duly complied with the requirements of order 8 of C.I.59 by attaching an affidavit with all the exhibits to prove his case and to show that the defendant has no defense to the suit. Defendant however failed to comply with the time limits set out in the rules which required him to file his notice of intention to defend the suit five (5) days upon service of the writ on him. From the record it is clear the suit proceeded under the general list as the defendant was allowed to file his defense to the suit even after the expiration of the period specified under order 8 of C.I.59.

On the 9<sup>th</sup> February 2023 all the parties were present in court when the plaintiff's attorney took the stand and relied on his witness statement filed on the 8<sup>th</sup> August 2022 as his evidence in chief with the following exhibit; Exhibit 'A' Power of attorney made on the 8<sup>th</sup> July 2020

The defendant declined to cross-examine the witness with the excuse that his lawyer will conduct the cross-examination on the next adjourned date. On the next adjourned date the defendant's lawyer was present in court but failed to cross-examine the witness and rather prayed for time to settle the matter out of court.

The suit was thus adjourned to the 26<sup>th</sup> April 2023 for parties to announce settlement and or for continuation of trial. Counsel for defendant failed to show up in court on the adjourned date and the suit was adjourned to the 17<sup>th</sup> May 2023 for continuation.

On the adjourned date, counsel for defendant again failed to come to court despite hearing notice duly served on the defendant and the court thus discharged the witness. The plaintiff called PW1 who testified by relying on his witness statement filed on the 8<sup>th</sup> August 2023 with the following exhibits;

Exhibit B – Agreement for provision of security

Exhibit C – statement of account of Defendant

Exhibit D – Letter from defendant to plaintiff.

Exhibit E – Response from Plaintiff to defendant dated 5<sup>th</sup> November 2019.

There was no cross-examination, plaintiff closed his case and the witness was discharged. From the procedural history outlined above, the defendant was duly served with hearing notices for every court sitting he however chose to absent himself from the trial.

In the case of **Republic v Court of Appeal Accra Ex parte East Dadekotopon Development Trust**, Civil motion No. JS/39/2015, dated 30<sup>th</sup> July 2015, the supreme court held as follows;

***"there could not be a breach of the rules of the audi alteram partem rule when it is clear from the facts that sufficient opportunity was given to a party and was abused by him"***

The court will now analyze the unchallenged evidence of the plaintiff on record as the defendant failed to participate in the trial.

**Exhibit "C"** tendered by plaintiff' witness is a statement of account showing the total payments made by the defendant to plaintiff.

The initial debt on exhibit "c" was 205,060.25 and defendant paid an amount of 168,954.81 it thus remained an outstanding amount of GH¢ 36,105.44 which the plaintiff is presently claiming.

In **Zabrama vrs Segbedzi [1991] 2 GLR 223 at 246**, Kpegah JA (as he then was) refined the definition of proof in law when he said:

*"A person who makes an averment or assertion which is denied by his opponent, has the burden to establish that his averment or assertion is true. And, he does not discharge this burden unless he leads admissible and credible evidence from*

*which the fact or facts he asserts can properly and safely be inferred. The nature of each averment or assertion determines the degree and nature of that burden”.*

In this case the plaintiff at the trial successfully led evidence by exhibiting the contract between the parties and further proved that the defendant accepted liability by already making payments towards defraying the accrued sum. Exhibit “C” is a clear example of payments already made by defendant. The defendant in his affidavit in opposition did not also deny the existence of the contract between the parties but only sought to raise the claim of set-off as justification for not paying the remaining debt.

Since the court has already made a finding as to the claim of set-ff, and upon careful consideration of the evidence led by the plaintiff together with the exhibits tendered, the court finds from the totality of evidence on record that the defendant is indebted to the plaintiff to the tune of thirty-six thousand one hundred and five cedis forty-four pesewas. (GH¢ 36,105.44.) The plaintiff’s claim thus succeeds.

### **CONCLUSION and FINAL ORDERS**

The court finds that the plaintiff has been able to prove his claim on a preponderance of probabilities and I accordingly hold that plaintiffs claim succeeds with the following orders;

- a) Defendant is ordered to pay the sum of 36, 106.44 to plaintiff being the outstanding sum owed to plaintiff for security services rendered to defendant
- b) Interest on the sum adjudged in order (a) at the prevailing commercial bank rate from the 22<sup>nd</sup> January 2020 to date of final payment
- c) Cost of GH¢ 5000.00 in favour of plaintiff as against the defendant.

**[SGD]  
BENEDICTA ANTWI (MRS)  
DISTRICT MAGISTRATE**

**COUNSEL:**

**FOR PLAINTIFF  
FOR DEFENDANT**

**PARTIES:**

**... PRESENT  
... PRESENT**

