

**CORAM: IN THE DISTRICT COURT, ACHIMOTA – ACCRA HELD BEFORE HER
WORSHIP PRINCE OSEI OWUSU SITTING AS DISTRICT MAGISTRATE ON 2ND
AUGUST 2023**

SUIT NUMBER: G/AC/DG/A2/11/23

BABA HALIDU MUSA - PLAINTIFF
UNNUMBERED HOUSE
ADJRINGANOR, ACCRA

V
RUDOLPH OBENG – KWAKYE - DEFENDANT
107 ARCHER ST, ABELEMKPE
ACCRA

.....
TIME: 10:06AM

PARTIES ABSENT

**BERNICE AFFUL HOLDING BRIEF FOR EMMANUEL MATE KORLE FOR
PLAINTIFF**

JUDGMENT

The Plaintiff instituted this action against the Defendant on 27/10/22 praying for the following reliefs;

- (a) An order for the recovery of Thirty Two Thousand Eight Hundred United States Dollars (\$ 32,800.00).

- (b) Interest on the said amount at the prevailing bank rate from 3rd February 2022 till date of final payment.
- (c) General Damages for breach of contract
- (d) Cost, including lawyers fee
- (e) Any other reliefs this Court may deem fit.

According to the Plaintiff, per his accompany statement of claim, the Defendant entered into a loan agreement to be paid after 90 days, He said the amount was (\$32,800.00) at an interest rate of 10% to the Defendant.

He further stated, the Defendant has failed to pay the amount after 90 days. The Defendant failed to file statement of defence though he was served with statement of claim.

Notwithstanding the service of hearing notices, the Defendant failed to appear in Court. **Under order 25 Rule 1(2)(a) of the District Court Rules, 2009, (CI 59)** where an action is called for trial and the Defendant fails to attend, Plaintiff, would be allowed to prove his claim. The Defendant, had the opportunity to come to Court to cross examine the Plaintiff or put up a defence to the suit but he elected not to be present to challenge the Plaintiff's claim by his conduct of not appearing in Court, the Defendant can therefore not raise at any point raise that the door of justice was shut to him. it has been held that,

"It is a salubrious principle of Law of our Jurisdiction that a litigant should have the opportunity of being heard, of telling his side of the story, or of being there to present evidence and put argument to buttress his case, but it is also settled that once the opportunities have been extended to the litigant but litigant decides not to avail himself within period of the trial, he would not on Judicial consideration be permitted to come later and plead for the reactivating of the very opportunities he declined to embrace".

See: **Mence Mensah v. E. Asiamah** [2011] 38 GMT 174 SC and **Poku v. Poku** [2007 – 2008] SCGLR 996. The Court being fortified with these authorities proceeded to allow plaintiff prove his case.

The Court on the strength of these authorities therefore proceeded to hear the Plaintiff prove his claims.

Issues

The issues for determination are;

- (a) Whether or not there was any agreement between the parties for Plaintiff to loan an amount of \$ 32,800.00 for the Defendant.**
- (b) Whether or not the Defendant has failed to pay the loan as promised.**

It is trite that in civil cases the general rule is that the party who in his/her pleadings or writ raises issues essential to his/her case assumes the onus of proof.

See, *THE CASE OF TAKORADI FLOUR MILLS V SAMIR FARIS* [2005 – 2006] SCGLR at 900. *GIHOC*
REFEGERATION & HOUSEHOLD v JEAN HANNA ASSI [2005 – 2006] SCGLR 458,
TAGOE v ACCRA BREWERY [2016]93 GMJ 103, *SC DELIMAM OIL v HFC BANK* [2016] 92 GMJ 1 CA.

The Plaintiff had the onus of discharging the burden of producing sufficient evidence in respect of his claim, on a balance of probabilities. Notwithstanding, the fact that the Defendant was not in Court the Court must still satisfy itself that the Plaintiff has satisfied the burden of probabilities. The Plaintiff testified on 10th May 2023.

The Plaintiff in his evidence in chief testified that he entered into an agreement with the Defendant to loan him an amount of (\$ 32,800.00). He stated that the Defendant failed to honour the promise to pay back the loan within 90 days.

From the evidence adduced, I find that the Plaintiff entered into an agreement with the Defendant and on the bases of that gave a loan of (\$32,800.00) to the Defendant. The Defendant in breach of the agreement he has with Plaintiff.

Since the suit was instituted in October 2022, the Defendant has not appeared to challenge the claim of the Plaintiff or file any process to that effect. From **exhibit A**, parties agreed for the loan to be repaid within 90 days. The Defendant has however, never appeared for the Court to even direct parties take advantage of Alternative Dispute Resolution.

The Defendant having failed to react to any of the averments of the Plaintiff, it is deemed that he admitted all allegations made against him.

When a party leads evidence which is not challenged by his opponent in cross examination, nor does the opponent tender evidence to the contrary, these facts depose to are deemed to have been admitted by the opponent and must be accepted by the Court.

See the case of **Samuel Adrah v. ECG, [2018] 119, GMJ 143 @ 184 CA per Dzamefe, J.A.** The Court having considered the Plaintiff's uncontested evidence finds that the Plaintiff has been able to prove his claim on a balance of probabilities and Judgment is accordingly entered for him as follows.

- (a) The Plaintiff is entitled to recover the sum of \$32,800.00 being money loaned to the Defendant.
- (b) The Plaintiff is entitled to interest on the amount in supra at the prevailing commercial bank rate from November 2021 to date of final payment
- (c) Cost of GH¢ 2,000.00 is awarded for the Plaintiff against Defendant.

HIS WORSHIP PRINCE OSEI OWUSU

DISTRICT MAGISTRATE