

CORAM: IN THE DISTRICT COURT, ACHIMOTA – ACCRA HELD BEFORE HIS
WORSHIP PRINCE OSEI OWUSU SITTING AS DISTRICT MAGISTRATE ON THE
14TH NOVEMBER, 2023

SUIT NUMBER: A2/114/23

EDWARD ADDO
H/NO 9, TEMA

- PLAINTIFF

VS

MICHAEL ASIME
MACOYE TECH, ACCRA
ACHIMOTA

- DEFENDANT

.....
TIME: 10:31AM

PLAINTIFF PRESENT

DEFENDANT ABSENT

JUDGMENT

Per a writ of summons issued by the plaintiff on 1/08/23, the Plaintiff claimed against the Defendant for the following reliefs;

- (a) Payment of debt of GH¢ 5,000.00*
- (b) Interest on the said GH¢ 5,000.00 from November 2019 to date of final payment*
- (c) Damages for breach of contract*
- (d) Cost*

It is the Plaintiff's case per writ of summons and statement of claim that he is a medical officer and the Defendant is a business man. According to the Plaintiff somewhere 19th

November 2019, the Defendant indicated to him that he has a brand new television for sale at a cost of GH¢ 9,000.00.

Plaintiff stated that he expressed interest to buy the television with an agreement of Plaintiff paying an initial amount of GH¢ 5,000.00 pending satisfaction of Plaintiff after which the remaining GH¢ 4,000.00 will be paid in two weeks. The Plaintiff further stated that he paid GH¢ 5,000.00 into GT Bank accounts of the Defendant. He said the Defendant sent the Television and dish washer to the Plaintiff to buy the two. Plaintiff averred that upon receipt of the two hours he realized that the television and the dishwasher were not brand new as suggested by the Defendant. The Plaintiff further averred he sent the television back to the Defendant and the Defendant promised to refund the money i.e. GH¢ 5,000.00 as someone is ready to buy the television. The Plaintiff further more stated the defendant has failed to refund the money in spite of several calls to remind him.

The Defendant was duly served with the writ of summons and hearing notices per order of this Court. The Defendant did not appear before the Court on date fixed for hearing even though he was duly served with hearing notice per order of this Court. Since the Defendant were duly served but failed to appear before the Court, the proceeded with the matter.

Under order 25 Rule 1(2) (a) of District Court Rules, 2009 (CI 59) where an action is called for trial and the defendants fails to attend, the plaintiff would be allowed to prove his claim. The defendant has the opportunity to come to Court but decided 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 in time 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”.

Resolution of issues

Whether or not the Defendant owes the amount of GH¢ 5,000.00

It is a trite law that in Civil Cases, the general rule is that the party who’s his/her pleadings or writ raises issues essential to the success of his/ her case assumes duty proofing his case. Per *SC II (1) & (2), 12 (2) and 14 of The Evidence Act 1975 [NRCD 323] As Well as The Case of Takoradi Flour Mills v. Samir Faris [2005 – 2006] SCGLR 882 at 900. Gihoc Refegeration & Household v. Jean Hanna Assi [2005 – 2006] SCGLR 458, T. Chandriam v. Tetteh [2018] 120 GMJ 112 At 147 CA Per Agnes M.A Dordzie, JA and Air Namibia v. Micron Travel [2015] 91 GMJ 173 at 191 CA per Kanyoke JA.*

In his evidence in chief, the Plaintiff testified that the defendant promised to sell a brand new television set to him at a cost of GH¢ 9,000.00. Plaintiff said he relied on the representation made by the defendant and made an initial payment of GH¢ 5,000.00. Plaintiff said the television turned out to be a used television upon receipt of same.

It must be noted that the Defendant made the representation knowing very well that the television was not brand new. The Plaintiff would not have entered into such contract but for the misrepresentation.

Having regard to the fact that defendant did not appear before this Court to dispute the payment of GH¢ 5,000.00 to him, the judgment would be entered for the Plaintiff in the sum of GH¢ 5,000.00.

On the issue of interest payment, the Court must aver her mind to the guidelines laid down by the Court, in the case of **Standard Chartered Bank vs. Nelson [1999 – 2000] GLR 366.**

The Plaintiff as part of his relief prayed this honorable Court to order interest on the GH¢ 5,000.00 from November 19,2019, at the commercial bank rate of interest till date of final payment.

In view of the evidence adduced and the fact that Defendant breached the contract, it entitles the Plaintiff to be awarded interest on the sum of GH¢ 5,000.00.

Conclusion

Having regard to the totality of the present case and the evidence adduced by the plaintiff the Court holds that the Plaintiff has been able to discharge the burden of proof on him and judgment is entered in his favor against the Defendant as follows;

- (a) The Plaintiff is to recover an amount of GH¢ 5,000.00 being the initial Payment made to the Defendant for the promise of brand new television.*
- (b) The Plaintiff is entitled to interest on the sum in @supra at the prevailing commercial bank rate from November 2019 till date of final payment.*
- (c) Cost of GH¢ 500.00 is awarded against the defendant in favor of the Plaintiff.*

SGD

HIS WORSHIP PRINCE OSEI OWUSU

DISTRICT MAGISTRATE

