

**CORAM: IN THE DISTRICT COURT, ACHIMOTA – ACCRA HELD BEFORE HER
WORSHIP PRINCE OSEI OWUSU SITTING AS DISTRICT MAGISTRATE ON 26TH
OCTOBER,2023**

SUIT NUMBER: G/DG/AC/60/23

**LINDA OWUSU
GE-247-8936
TAIFA, ACCRA**

- PLAINTIFF

VS

**KOJO BOATENG
GE-247-8936
TAIFA, ACCRA**

- DEFENDANT

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**TIME: 9:39AM
PLAINTIFF PRESENT
DEFENDANT ABSENT**

JUDGMENT

Per a writ of summons issued by plaintiff on 22/2/23, Plaintiff claimed against the Defendant the following reliefs;

- (a) Recovery of the amount of Three thousand Ghana Cedis (GH¢ 3,000.00) being balance owned to Agyarku Traditional Cloth Supplier at Art Centre – Accra for almost (9) months.
- (b) Recovery of all amount given to Defendant by Plaintiff, totaling Four Thousand, Four Hundred and Fifty Ghana Cedis (GH¢ 4,450.00).
- (c) Adequate compensation to Plaintiff by Defendant for deceiving and wasting Plaintiff’s time for almost (5) years of living together as married couples.
- (d) Cost

It is the Plaintiff's case that per the statement of claim, she met the Defendant in 2019 at Art Centre and later became lovers and eventually got married on 11/12/21 and now have two years old son with the Defendant. Plaintiff stated that somewhere June/July 2022, the Defendant called to inform her that some chiefs from Mamfe are looking for cloths to buy so she should contact one famous supplier of Traditional Cloth at Art Centre to provide two Traditional clothes for sale. Plaintiff said that she collected 2 Traditional cloths at cost of GH¢ 2,500.00 and GH¢ 3,500.00 all totally Six Thousand Ghana Cedis (GH¢ 6,000.00). plaintiff further averred that she supported the Defendant financially in so many times to the tune of GH¢ (4,450.00).

Pursuant to grant of an order for substituted service dated 30/3/23 the Defendant was served with writ of summons and statement of claim and hearing notice by substituted service through posting on the Court's notice board and soft copy sent to the Defendant's mobile number 0597067442, subsequent hearing notices were served through the same modes.

Despite due service, the Defendant never appeared 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.

Resolution of issues

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 in this suit is praying for an order of recovery of money against the Defendant.

In her evidence in chief the Plaintiff testified by repeating all the averments in her pleading. It's her case that her husband asked her to buy cloth on credit from one traditional cloth seller at Art Center in Accra. I find as a fact that the Defendant asked the plaintiff to go in for the clothes and also took some money from the Plaintiff.

The Court having considered the Plaintiff's uncontested evidence, finds that she has been able to discharge the burden on her of proving her case on a balance of probabilities.

In the light of the about, the Court hereby enter judgment in favour of plaintiff as follows;

- (a) Recovery of the remaining amount of three thousand Ghana Cedis (GH¢ 3,000.00) being remaining balance of Traditional clothes she bought for the Plaintiff.
- (b) Recovery of amount of Four Thousand Four Hundred and fifty Ghana cedis (GH¢ 4,450.00)
- (c) Interest on the supra amount at commercial bank rate from December 2021 to final date of payment.
- (d) Cost of GH¢ 1,000.00 awarded against the Defendant.

SGD

HIS WORSHIP PRINCE OSEI OWUSU

DISTRICT MAGISTRATE