

IN THE DISTRICT COURT SITTING AT AMASAMAN ON WEDNESDAY THE  
20<sup>TH</sup> DAY OF SEPTEMBER, 2023 BEFORE H/W STANISLAUS AMANOIPO –  
MAGISTRATE

SUIT NO. A2/279/21

**RICHARD AGYENIM BOATENG**

**VRS**

**EVELYN DAGBEY**

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**J U D G M E N T**

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1. By a writ of summons and accompanying affidavit in support dated the 13<sup>th</sup> day of October, 2021, the Plaintiff initiated the Defendant for the following reliefs;
  - i) An order of this Honourable Court to compel Defendant to pay GH7,150.00 being cost of mother care (children cloths/stuff) which was given to Defendants to sell and pay back to Plaintiff but which she failed to do so after persistent demands since February, 2021.
  - ii) Cost and any other order deem fit by the Honourable Court.
  
2. The Defendant upon the receipt of the summons filed a statement of defence dated 15<sup>th</sup> November, 2021 denying the averments made in the Plaintiff's writ of summons and summary of subject matter of claim and counter-claimed to writ;
  - a) An order of the Court directed at the Plaintiff to pay the sum of Ten Thousand Ghana Cedis (GH¢1,000.00) to the Defendant for wasting her time.
  - b) Substantial cost.
  
3. On the 22<sup>nd</sup> of December, 2021, Plaintiff filed a reply to the Defendant's statement of defence and counter-claim denying same.

#### 4. PLAINTIFF'S CASE

The Plaintiff's case contained in his summary of subject matter of claim and reply to the Defendant's defence and counter-claim is that, he gave quantities of a mother care (children clothes/stuff) to the Defendant to sell and pay back but she failed to do so as agreed. The Plaintiff continues to say that all effort to retrieve the amount from the Defendant has proven futile and that the Defendant will not pay the sum unless ordered by the Court.

#### 5. DEFENDANT'S CASE

The Defendant's case is contained in the statement of defence filed on the 15<sup>th</sup> November, 2021. She says she and Plaintiff were in a relationship for five (5) years 7 months. Further that, somewhere October, 2021, Plaintiff gave Defendant the sum of Five Thousand Ghana Cedis (GH¢5,000.00) to support her business which amount Defendant invested in her mother care business. That she gave the said amount to a friend who resides in China to buy her the goods though expected in December, the festive period rather arrived in January, 2022. The Defendant's case is that the money she received from Plaintiff was not a loan for the Plaintiff but financial assistance as support for her business on the parties at the time they were living together as husband and wife. However, that the relationship collapsed when the Plaintiff said she could not provide her children. That Plaintiff formally parked her out of the home on the 1<sup>st</sup> of November, 2021.

The Defendant contends that she used the proceeds from the business as well as the principal amount for their upkeep. Therefore, that Plaintiff is not entitled to his reliefs since the Five Thousand Ghana Cedis (GH¢5,000.00) given her was not a loan but financial assistance to support her business.

6. It is Plaintiff's case in his reply to the defence and counter-claim that his claims is for GH¢7,160.00 given to Defendant which is different from the GH¢5,000.00 stated by Defendant. Further that, their relationship was only 3years and 7 months and not 5years 7months as claimed by the Defendant.

That he gave her GH¢4,000.00 which she used to fabricate a container in 2018 which Defendant used for the mother car shop at Okaishie. Therefore, that his claim is not for the GH¢5,000.00 stated by the Defendant but GH¢6,150.00 and additional GH¢1,000.00 cost of the mother care goods from China. Plaintiff denied calling Defendant barren since according to Plaintiff, Defendant already had given birth to four (4) children before they met. However, that the

break was as a result of a man he met at Defendant's shop who assaulted him without Defendant's intervention but only saved by onlookers. On Defendant's living their home, Plaintiff says it was with an order by the Police wherefore the Defendant according to Plaintiff now lives in an apartment rented by the man who assaulted him.

He denied Defendant's claim that she used the proceeds and principal of the amount to cater for them. That he provided adequately for Defendant therefore, that Defendant's claim for GH¢10,000.00. That he already compensated her with a container with goods worth GH¢5,000.00 Defendant admitted he gave her. He supported Defendant in cash and kind since he met her till day she parked out from his premises. That with all issues, Defendant has also disappointed him by not marrying him.

7. The Plaintiff called as witness Richard Twumasi, his brother in China. He introduced Defendant to the brother in China and on the mother care business. That the Defendant told him, Plaintiff is her financier. He confirmed to Plaintiff the discussion he had with Defendant and the Plaintiff also called his brother in China. He admitted an amount of GH¢6,150.00 transferred to his brother in China with additional cost of GH¢1,000.00 for the goods totaling GH¢7,170.00. That the Defendant accompanied him to the bank for that transfer.

Second witness of Plaintiff, Frank Amponsah says he had heard the conversation on phone between Plaintiff and PW1 brother in China.

He went with Plaintiff to withdraw money at Best Point Savings and loans. Thereafter, they proceeded to Ecobank Branch at Mile 7 to transfer the money to PW1 brother at China. He was also present when the goods arrived. They checked to make sure all the goods were inclusive.

As for DW1, she is a daughter to the Defendant who had been in a relationship with Plaintiff for 5years. That they lived as man and wife. That when Plaintiff supported the mother in her business, the mother made her to thank the Plaintiff for the support. That they live peaceful till Plaintiff started accusing the Defendant being barren and abusing the Defendant.

- 8.** From the statement of claim, defence, reply and counter-claim filed, summary of evidence, the following issues are not in contention;
- i) That the parties cohabited as husband and wife for a period not less than 5years.
  - ii) It is also not in doubt that the Plaintiff supported Defendant in her business whilst they lived together.
  - iii) From the brief facts, the demand by the Plaintiff of the amount came after the break between them.

The issues therefore set out for determination;

- a. Whether or not the amount in contention is GH¢7,170.00 as claimed.
  - b. Whether the Plaintiff is entitled to his claim of refund.
  - c. Whether Defendant is entitled to her counter-claim for compensation.
- 9.** The Plaintiff in evidence has exhibited an Exhibit 'A' which shows transfer of GH¢6,170.00 to one Tenkorang Acheampong at China for the mother care goods. There is also evidence that Plaintiff withdrew the amount first from his account at Best Point before the transfer at Ecobank. At the time of transfer, Defendant was present at the bank. In fact, the evidence is that it is through Defendant's contacts with Plaintiff's witness' brothers that the deal was struck. The Plaintiff had to make a call to the witness' brother at China to confirm what the Defendant told him. It is therefore not in doubt that goods were brought on the initiative of the Defendant but the amount from the Plaintiff's account. Though the Defendant evidenced that she had saved that amount in Plaintiff's bank, she failed to provide any further evidence to the effect.
- 10.** The next issue now is whether or not the Plaintiff is entitled to refund of the amount from Defendant. His case is that they had an agreement that Defendant would refund to him the principal amount and cost amounting to GH¢7,160.00 upon sale of the products.

Defendant now denies this assertions and that the initial capital of GH¢5,000.00 was promised to support her business though Plaintiff spent more than that. More so, that she used the proceeds for their upkeep as man and wife.

Though the Plaintiff denied this and that he provided adequately for their upkeep, the evidence showed that these said amount in contention was given

since 2021, December when the goods were brought. Though the Plaintiff stated that he started demanding the amount since February, 2021, it was after the breakup that the Plaintiff instituted this action.

The evidence is that, they lived as couple for about 5years before the breakup from 2016 to 2021. They were in a domestic relationship though not formally married. In fact, the Defendant in evidence stated that at a funeral, the Plaintiff had promised to his family he would marry her.

Generally, agreements entered into between a husband and wife in the domestic setting, presumed that there is no intention to create legal relations between them and therefore such agreements are usually not enforceable in a Court of Law. See **Barlfour vrs Barlfour (1959) 2 KB 571**. But as indicated, the parties in this instance are not married but by extension lived as couple. The Defendant from the evidence sold her container, vacated her premises at Kwabenya and parked kith and kin with her children to live with Plaintiff at Amasaman. Thus establishing a domestic relationship where each would sacrifice for the other. Indeed, would go to any length to support the other. In this instance, Plaintiff provided money to establish the shop of the Defendant which has been reconstructed.

It is the opinion of the Court that such circumstances, there is no intention to create legal relation except specifically provided in writing or evidence. The Plaintiff's claim is not proven and therefore dismissed.

**11.** The next but the last is the Defendant's counter-claim of GH¢10,000.00 as compensation for waste of her time.

Aside the statement made in her counter-claim, no further evidence has been adduced. Their relationship was a mutual without any strings attached. Though Defendant further stated that Plaintiff promised to may her, no further evidence has been adduced to establish breach of the promised to marry her. Counter-claim is not proven and dismissed. No cost awarded on either side.

**(SGD)**  
**H/W STANISLAUS AMANOIPO**  
**(MAGISTRATE)**