

**CORAM: HER WORSHIP NANA ABENA ASOH OWUSU-OMENYO (MS.),  
MAGISTRATE, DISTRICT COURT '1', KANESHIE, SITTING AT THE FORMER  
STOOL LANDS BOUNDARIES SETTLEMENT COMMISSION OFFICES NEAR  
WORKERS' COLLEGE, ACCRA ON 14<sup>TH</sup> SEPTEMBER 2023**

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SUIT NO: A2/013/23

**BAYPORT SAVING & LOANS                    }     PLAITNIFF  
ACCRA  
VRS**

**ANTHONY KANKAM                                }     DEFENDANTS  
ACCRA**

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**JUDGMENT**

The plaintiff claims against the defendant the following reliefs:

- i. Recovery of the amount of Twenty-Seven thousand three Hundred and Eighteen Cedis Seventy-Nine Pesewas. (GH¢27,318.79), being the outstanding loan balance under a payroll facility as at 25th May 2022.
- ii. Interest on the aforementioned sum at the prevailing commercial rate from the date of disbursement till the date of final payment.
- iii. Cost including Counsel's fees.

**CASE OF THE PLAINTIFF**

The plaintiff's is a non-banking financial institution registered for the purposes of providing short-, medium- and long-term micro-credits, insurance products and deposit management to its customers. Plaintiff says that the defendant, is its customer and a pharmacy technician at the Directorate of the Health, Accra.

The plaintiff avers that the defendant applied for and was granted a payroll facility loan of Nine Thousand Ghana Cedis, (GH¢9,000), evidenced by a loan application form and a loan agreement form, annexed as “**Exhibits A and B**”. The defendant breached the terms of the loan agreement and has failed to repay the loan amount even after several demands. This is evidenced by a final demand notice, exhibited as “**Exhibit C**”.

Finally, the final amount owing by the defendant stood at Twenty-Seven thousand three Hundred and Eighteen Cedis Seventy-Nine Pesewas. (GH¢27,318.79) as at the 25<sup>th</sup> May 2022.

The defendant was duly served with the writ of summons and statement of claim on the on 10<sup>th</sup> August 2022, same is evidenced by an affidavit of service dated 10<sup>th</sup> August 2022.

The defendant was not served with subsequent processes personally because he was either unavailable for service or could not be reached. The processes were thus served on him by substitution in accordance with order **4 rule 5 of the District Court Rules, 2004(C.I 59)**.

The matter was thus adjourned for trial, the plaintiff through its representative tendered its witness statement and same was adopted as its evidence in chief.

## **ISSUES**

1. Whether or not the defendant is indebted to the plaintiff.
2. Whether or not the plaintiff is entitled to recover the amount of Twenty-Seven thousand three Hundred and Eighteen Cedis Seventy-Nine Pesewas. (GH¢27,318.79)

## **COURT ANALYSIS**

1. Whether or not the defendant is indebted to the plaintiff.

The plaintiff, having instituted this action is under a duty to prove its claims by evidence. **Sections 11(1); 12(2) and 14 of the Evidence Act 1975**, NRCD 323, places the burden of proof squarely on the party making a claim or an averment. In this case, the plaintiff has

the responsibility to adduce evidence to establish the defendant's indebtedness to it. In the case of *Agbosu v Kotey; In Re Ashalley Botwe Lands [2003 – 2004] SCGLR 420* the court stated that *"The effect of sections 11(1) and 14 and similar sections in the Evidence Decree 1975 may be described as follows: A litigant who is a Defendant in a civil case does not need to prove anything. The Plaintiff who took the Defendant to court has to prove what he claims he is entitled to from the defendant."*

The plaintiff sought to prove its claim against the defendant by adducing *Exhibits A and B*, which are the loan application forms and the loan agreement executed between the parties.

A critical analysis of the said documents clearly shows that the defendant applied for the loan of Nine thousand Ghana Cedis (GH¢9,000), as a payroll salary loan. There is attached to **exhibit B**, a signed mandate form authorizing the plaintiff to make deductions at source.

The plaintiff in view of the indebtedness of the defendant went ahead to issue a demand notice ("**Exhibit C**") to this effect. The defendant even after the said demand notice was served on him failed to make good his debt. The plaintiff in my opinion has fully discharged the evidential burden placed on him to substantiate its claim against the defendant.

## **ISSUE 2**

Whether or not the plaintiff is entitled to recover of the amount of Twenty-Seven thousand three Hundred and Eighteen Cedis Seventy-Nine Pesewas. (GH¢27,318.79).

The evidence presented by the plaintiff, especially "**exhibit C**", clearly shows the total amount owing to be Twenty-Seven thousand three Hundred and Eighteen Cedis Seventy-Nine Pesewas. (GH¢27,318.79) as at the 25<sup>th</sup> May. I find that the amount owed by the defendant is as indorsed on the Writ Of summons. This amount corresponding with

the terms of the loan agreement which was for the defendant to repay the loan at an amount of Five Hundred and Fourteen Ghana Cedis, Fifty-Nine Pesewas (GH¢514.59) for a period of Sixty Months. The defendant as of the date this writ was issued had only paid an amount of Five Thousand Eight Hundred and Fifty Seven Cedis Fifty Nine Pesewas (GH¢5,857.59)

The plaintiff has been able to discharge the burden of proof placed on it and the claim must succeed.

### **CONCLUSION**

I hereby enter judgment in favour of the plaintiff for the following reliefs:

- i. Recovery of the amount of Twenty-Seven thousand three Hundred and Eighteen Cedis Seventy-Nine Pesewas. (GH¢27,318.79) being the outstanding loan balance under a payroll facility as at 25th May 2022.
- ii. Interest on the said amount at the prevailing commercial rate from the date of disbursement till the date of final payment.
- iii. Cost of Two Thousand Ghana Cedis (GH¢2,000) for plaintiff.

**NANA A. A. OWUSU-OMENYO (MS.),  
(MAGISTRATE)**

