

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 14TH SEPTEMBER 2023

SUIT NO: A2/011/23

BAYPORT SAVING & LOANS } PLAITNIFF
ACCRA
VRS

ANTHONY KANKAM } DEFENDANT
ACCRA

JUDGMENT

INTRODUCTION

The plaintiff instituted the present action against the defendant, for the following reliefs:

- i. Recovery of the amount of Eight Thousand Three Hundred and Forty-Three Cedis Fifty-Four Pesewas. (GH¢8,343.54), 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.

The writ of summons together with a hearing notice were served on the defendant on the 15th Day of August 2022, same is evidenced by an affidavit of service. The defendant did not appear in court at the return date. The plaintiff was ordered to file its witness statement and serve same on the defendant together with a hearing notice. The plaintiff complied with the order to file witness statements and filed same on the 15th Day of September 2022.

The defendant however, could not be served with the process because he evaded serve. This is captured in the affidavit of non-service dated 19th October 2022.

The processes were therefore served by substitution in accordance with order **4 rule 5 of the District Court Rules, 2004(C.I 59)**; the relevant provision reads **“where it appears to the court either after or without an attempt at personal service that for any reason attempts at personal service cannot be affected, the court may order that personal service be affected by:**

- a. **delivery of the document to an adult resident at the usual or last known place of abode or business of the person to be served, or**
- b. **delivery of the document to a person who is an agent of the person to be served, or to some other person, if it is proved that there is reasonable probability that the document will, through that agent or other person, come to the knowledge of the person to be served, or**
- c. **in any other manner that the Court directs.**

Service of the witnesses’ statements and hearing notice were effected and a date set for trial.

CASE OF THE PLAINTIFF

The plaintiff describes itself as 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. It says that the defendant applied for a payroll facility loan of Three Thousand Seven Hundred Ghana Cedis, (GH¢3,700) the plaintiff exhibited the loan application form as **“Exhibit A”**. the said loan request was acceded and the amount of Three Thousand Seven Hundred Ghana Cedis was disbursed to the defendant. copies of the loan agreement exhibited as **“Exhibit B”**.

According to the terms of the loan the defendant was to pay an amount of one hundred and eighty-one Ghana cedis seventy-five pesewas monthly (GH¢181.75) over a sixty (60), month period. The defendant has however failed to pay back the total amount to the. Plaintiff, and even after several demands the defendant has failed to

liquidate his indebtedness to the plaintiff. Plaintiff exhibited a demand letter as “Exhibit C”.

The plaintiff however states that the defendant has paid an amount of Three Thousand and Twenty-Eight Cedis out of the total amount payable, and as at May 2022, the total loan balance was Eight Thousand Three Hundred and Forty-Three Cedis Fifty-Four Pesewas. (GH¢8,343.54).

The plaintiff by this action, prays this court to assist it recover the total amount owing from the defendant.

ISSUES

1. Whether or not the defendant is indebted to the plaintiff.
2. Whether or not the plaintiff is entitled to recovery of the amount of Eight Thousand Three Hundred and Forty-Three Cedis Fifty-Four Pesewas. (GH¢8,343.54).

COURT ANALYSIS

The court records show that the defendant did not appear in court to defend the instant suit. The plaintiff however, still bears the burden of proving its case purely on the merits or strengths of the evidence in support of its claim. The position of the law is clear. Where a party to a suit does not appear to prosecute and or defend the matter the court can make a decision based on the strength of the evidence of the party in court. In the case of *Takoradi Flour Mills v. Samir Faris (2005-2006) SCGLR 882*, the supreme court held that “*a tribunal of fact can decide an issue on the evidence of only one party*”. Further, in the case of *Republic v. Court of Appeal, Ex Parte Eastern Alloys Co. Ltd [2007-2008] 1 SCGLR 371* the supreme court held ‘*a party that was aware of a hearing date and yet absented itself could not say there was a breach of natural justice if the case was held in his absence*. The absence of the defendant, does not in any way affect the case of the plaintiff in anyway. The records who that the defendant was well are of the pendency of the suit but chose to stay away.

The next and most important prong is whether the claim of the plaintiff should succeed based on the evidence adduced. The plaintiff assumes the burden to prove its case, with sufficient evidence to establish the existence of its assertion and secure a ruling in its favour. This is set out in *sections 10(1) and 2; 11(1) and (4);12(1) and (2);14, and 17(1) and (2) of the Evidence Decree 1975 (NRCD 323)*. The relevant sections quoted below:

Section 10

- 1) *For the purposes of this Decree, the burden of persuasion means the obligation of a party to establish a requisite degree of belief concerning a fact in the mind of the tribunal of fact or the court.*
- 2) *The burden of persuasion may require a party to raise a reasonable doubt concerning the existence or non-existence of a fact or that he establish the existence or non-existence of a fact by a preponderance of the probabilities or by proof beyond a reasonable doubt.*

Section 11

- 1) *For the purposes of this Decree, the burden of producing evidence means the obligation of a party to introduce sufficient evidence to avoid a ruling against him on the issue.*
- 4) *In other circumstances the burden of producing evidence requires a party to produce sufficient evidence so that on all the evidence a reasonable mind could conclude that the existence of the fact was more probable than its non-existence.*

Section 12

- 1) *Except as otherwise provided by law, the burden of persuasion requires proof by a preponderance of the probabilities.*
- 2) *Preponderance of the probabilities” means that degree of certainty of belief in the mind of the tribunal of fact or the court by which it is convinced that the existence of a fact is more probable than its non existence.*

Section 14

Except as otherwise provided by law, unless and until it is shifted a party has the burden of persuasion as to each fact the existence or non-existence of which is essential to the claim or defence he is asserting.

Section 17

- 1) *Except as otherwise provided by law, the burden of producing evidence of a particular fact is on the party against whom a finding on that fact would be required in the absence of further proof.*
- 2) *Except as otherwise provided by law, the burden of producing evidence of a particular fact is initially on the party with the burden of persuasion as to that fact.*

The plaintiff tendered “**Exhibits A and B**”, the facility requests and loan application forms to show that the defendant had indeed applied for and had been granted a loan. An examination of the exhibits, shows that both of them bear the signature of the defendant. Attached to “**Exhibit B**”, is an authority note or a mandate to the Controller and Accountant General’s department to allow the plaintiff make deductions at source from his salary for the payroll loan facility. The said form shows the defendant is the is a worker with the ministry of education.

There is therefore no doubt that the defendant indeed contracted the said loan from the Plaintiff.

The second issue resolves itself in the first. In that the defendant according to the terms of the loan agreement which was duly signed, agreed to pay an amount of one hundred and eighty one cedis and seventy five pesewas to (GH¢181.75) over a sixty (60), month period. This agreement the defendant clearly breached. A copy of the statement of account from the defendant is exhibited as “**Exhibit D**”, and this clearly shows the defendants indebtedness to the plaintiff. The final demand notice, “**exhibit C**”, is indicative that the defendant has notice of his indebtedness to the plaintiff, but has failed to liquidate same.

On the totality of the evidence presented by the plaintiff. I am of the firm opinion that the plaintiff's claim should succeed.

CONCLUSION

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

- i. Recovery of the amount of Eight Thousand Three Hundred and Forty-Three Cedis Fifty-Four Pesewas. (GH¢8,343.54), 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 of

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