



7/3/2023

ABIGAIL AFI YRAM AIDOO  
VS  
BERNARD NANA Y.B NAYO  
JUDGEMENT



HER WORSHIP SIRAN MAHAMA  
TEMA DISTRICT COURT '2'

**IN THE DISTRICT COURT 2, TEMA, SITTING ON THE 3<sup>RD</sup> DAY OF JULY, 2023 BEFORE HER WORSHIP SIRAN MAHAMA, THE DISTRICT MAGISTRATE.**

**SUIT NO. A2/82/2022**

**ABIGAIL AFI YRAM AIDOO  
VS.  
BERNARD NANA Y.B. NAYO**

**JUDGEMENT**

The brief facts of this suit, as gleaned from the pleadings, are as follows;

The Plaintiff is a banker, resident in Tema; and the Defendant is a farmer and Manager of Chamber of Farmers, Ghana; resident at Mataheko - Afiinya. The Plaintiff says that, somewhere in 2019, the Defendant approached her for investment into vegetable cultivation; and cocoa seedling production; on the Defendant's lands at Ada and Jasikan respectively. A business the Defendant was engaged in. Subsequently, both parties agreed as follows;

- a. That, the Plaintiff would invest an amount of GHS 3,838.00 with the Defendant for a one (1) acre farm; with a return on investment of GHS 6,000.00.
- b. That, the duration of each farming season would be 100-140 days/ 4 ½ months.
- c. That, the return of investment on one (1) acre for two (2) seasons (with irrigation) would be GHS 12,000.00.

The Plaintiff first advanced an amount of GHS 5,000.00 and another GHS 3,000.00 to the Defendant for the cultivation of the farms. Four Thousand Ghana Cedis (GHS 4,000.00) for vegetable farming; and the remaining Four Thousand Ghana Cedis (GHS 4,000.00) for cocoa seedling production. Plaintiff says that both parties executed an agreement to that effect. The Plaintiff says that after the farming season was over, the Defendant invited her and her husband to visit the farm and inspect the yield. At that time, the Defendant claimed that it was time for him to pay the Plaintiff the investment returns. Plaintiff says that, even though she could not personally visit the farm, the Defendant to her husband to the farm. However, to Plaintiff's husband's shock, the Defendant took him to a shriveled Watermelon farm instead of a vegetable farm; as agreed by the parties. According to the Defendant, the Watermelon farm was shriveled because of drought. Plaintiff further states that the Defendant requested that she visited the farm again, several months after failing to deliver the returns on Plaintiff's investment; as agreed for the first season. Notwithstanding this fact,

Plaintiff says that her husband visited the farm again. This time around, Plaintiff says that the Defendant showed her husband a pepper farm which had started fruiting at the time of the visit. Plaintiff says that the farm was duly inspected by the Plaintiff's husband. According to the Plaintiff, when it was time for the Defendant to pay the return on her investment; the Defendant started giving her excuses. Plaintiff says that after several demands, the Defendant made a payment of GHS 4,000.00, leaving a balance of GHS 4,000.00; which was to roll over with a return-on-investment amount due of GHS 12,000.00. The Plaintiff says that she believed that the GHS 4,000.00 refund was for the for the cocoa seedling production which never happened even a year after the initial investment was made. Thus, the outstanding amount due to the Plaintiff became GHS 16,000.00. The Plaintiff avers that she was convinced on the viability of the investment to the extent that she took a loan for it, which was attracting interest. In response to Plaintiff's statement of claim; Defendant admitted to all the above mentioned facts but stated that the farms failed due to drought. Defendant also stated that he was only liable to refund the principal amount of GHS 8,000.00 to the Plaintiff; out of which he has paid GHS 4,000.00. Therefore, according to the Defendant; he is only liable to pay a balance of GHS 4,000.00 to the Plaintiff. Nevertheless, Plaintiff states that Defendant is liable to pay a balance of GHS 16,000.00; and all efforts to get the Defendant to comply with the agreement proved futile. Therefore, the Plaintiff believes that the Defendant would not refund her money unless compelled by the court to do so.

Wherefore, the Plaintiff seeks the following reliefs as endorsed on the Writ of Summons;

1. Recovery of the amount of FOUR THOUSAND GHANA CEDIS (GHS 4,000.00), being Plaintiff's investment paid to the Defendant.
2. Recovery of the amount of TWELVE THOUSAND GHANA CEDIS (GHS 12,000.00), being return on Plaintiff's investment.
3. Interest, calculated at the prevailing commercial bank lending rate, on the amounts stated in reliefs 'a' and 'b', from January 2021, till date of final payment.
4. General damages for breach of contract
5. Costs of litigation

Therefore, the issues to be determined by this court are as follows;

- a. Whether or not there was a valid and binding contract between the Plaintiff and the Defendant.
- b. Whether or not the conduct of the Defendant amounted to a breach of the said contract.
- c. Whether or not the Defendant is liable to pay a total amount of GHS 16,000.00 being sought by the Plaintiff in respect of Claims one (1) and two (2) of this action.
- d. Whether or not the Defendant is liable to pay interest on the said amount of GHS 16,000.00 being claimed by the Plaintiff, from January 2021, till date of final payment.
- e. Whether or not the Plaintiff is entitled to General Damages.
- f. Whether or not the Plaintiff is entitled to costs of litigation

#### ISSUE 'A'

#### Whether or not there was a valid and binding contract between the Plaintiff and the Defendant.

The concept of agreement is the basis of every contract. A contract is essentially the outward manifestation of an agreement between the parties with regard to a common objective. The creation of a valid and enforceable contract are dependent the following factors. First, offer and acceptance. This is when one party who proposes the terms or conditions on which he is prepared to transact with the other party to accept, modify or reject them. In the case of **NTHC v Antwi [2009] SCGLR 117 at p. 125**, an offer was defined as an indication in words or by conduct by an offeror that he or she is prepared to be bound by a contract in the terms expressed in the offer, if the offeree communicates to the offeror his acceptance of those terms. Second, intention to create legal relations. This is where the parties must have clearly manifested an intention that their agreement or exchange of promises was intended to be legally enforceable. In **Balfour v Balfour [1919] 2 KB 571**, an action to enforce the promise of maintenance by the wife failed on the grounds that it was a domestic arrangement with no intention to create legal relations. The third factor is the capacity to contract. This is whether the parties have the power in law to create contractual relations between them. In **Chapple v Cooper [1844] 153 ER 105**, a minor's contract to purchase a coffin to bury her husband was held as a contract for necessities and she was liable. The last factor is consideration. This may be in the form of a return promise, or the actual performance of a stipulated act known as the quid pro quo. The 'consideration' may be an act i.e doing something or forbearance i.e not doing something or a promise to do or not to

do something as defined in the case of Currie v Misa [1875-76] LR 1 APP CAS 554. Even though this factor is not a mandatory requirement under Ghanaian contract law; it still indicates the intention of parties to enter a valid and binding contract.

In the instant case, per Exhibit 'A' series; there was a valid and binding contract between the parties herein. Page one (1) of Exhibit 'A' series included a description of the investment type being 'Vegetable farming' which was duly signed by both parties herein. Pages two (2) and three (3) of Exhibit 'A' series also includes a breakdown of the costs, timelines and return on investments being GHS 6,000.00 per acre; and GHS 12,000 per one (1) acre for two (2) seasons (with irrigation). These meet all the requirements of a valid and binding contract as stated above.

#### ISSUE 'B'

Whether or not the conduct of the Defendant amounted to a breach of the said contract.

It is the Defendant's case that the Plaintiff's farms failed due to drought; because the Plaintiff did not pay for irrigation. Therefore, the Defendant was relying on the doctrine of frustration as a basis for the unsuccessful farms. A contract is deemed to be frustrated if it becomes impossible or unlawful to be performed. As established in the case of, Kama Health Services Limited Vs. Unilever Ghana Limited [2013] DLSC 2751; even though a transaction may indeed have begun as a valid contract, it could have been rendered ineffective by the default of either party, or through the operation of the doctrine of frustration. This position was first established in the case of Wilkinson V Lloyd (1845) 7 QB 27. The doctrine of frustration only applies where unforeseen events render performance of the contract impossible; a party cannot claim to be discharged by a frustrating event for which he himself is responsible. Where a party causes the event in question, the contract is not frustrated, but the party is deemed to be in breach of the contract. In Afordi & Others v. Ghana Publishing Corporation [2002] DLCA6451; the Supreme Court noted that the doctrine of frustration in the narrow common law sense of frustration or in the wider international business law notion of force majeure, presupposes conditions of factual impossibility or commercial impracticality, or other insurmountable impediments as defined by the parties themselves.

In view of this, this court holds that the defence of frustration cannot lie in the instant case for the following reasons. First, considering that the Defendant herein is the Manager of the Chamber of Framers, Ghana; and is someone with considerable experience in farming, per his own admissions, he is deemed to be a person of special skill in this context and ought to have known that drought was a possibility which could definitely prevent the farms from yielding. Therefore, the possibility of a drought could have been reasonably foreseen by the Defendant, and he ought to have

been prepared for that occurrence. This court holds that it would amount to an injustice for the Plaintiff, who is a banker, and knows very little about farming to suffer any losses on her investments because of the Defendant's failure to provide for contingencies in the event of drought. Also, the Defendant, being the drafter of the agreement in Exhibit 'A' series, cannot cause the Plaintiff to suffer any losses because of any ambiguity or omissions in the said contract. From the letter head on page one (1) of Exhibit 'A' series, it indicates that the documents were generated by the Chamber of Farmers, Ghana, of which the Defendant is the Manager. Also, page three (3) of Exhibit 'A' series states that the return on investments for the Plaintiff would be

GHS 6,000.00 per acre; and GHS 12,000 per one (1) acre for two (2) seasons **(WITH IRRIGATION)** \*emphasis mine\*. The Plaintiff claims that per Exhibit 'A' series, the agreed return on investment included irrigation as evidenced on page three (3) of Exhibit 'A' series. This was established during the cross-examination of Plaintiff by Defendant, where the following ensued;

Q. Did you pay for any irrigation system?

A. I did not pay for any irrigation system because, per the agreement in Exhibit 'A' series at the last page, nothing shows that I was supposed to pay an extra cost for irrigation; and nothing shows that I would lose my principal where there is drought.

Q. Since you admitted that there is no contract in respect of irrigation, why did you include it on the writ of summons?

A. I did not include the cost of irrigation in my claim because per the last page of Exhibit 'A' series, the Defendant offered a return on investment of GHS 12,000 for two (2) seasons of one (1) acre farming. However, my claim is for GHS 16,000.00.

However, this court notes that the Defendant subsequently refused to continue cross-examining the Plaintiff. In so doing, the following exchange ensued;

By Court: - Today is for further cross-examination of Plaintiff by Defendant.

By Court: - Plaintiff is reminded of her previous oath.

By Defendant: - I would not cross - examine the Plaintiff. I withdraw my questions.

By Court: - Are you aware that the implications of refusing to cross examine mean that you are admitting to what the Plaintiff has stated in her witness statement and submitted as evidence?

By Defendant: - Yes. I am aware. I won't cross-examine the Plaintiff.

Under the Contra Proferentem rule, when there is doubt or ambiguity in the wording of a contract term, the term is construed against the party who drafted or presented the contract. The rationale behind this rule is that the party who prepared the contract is usually in a better position to clarify ambiguous language or to protect against potential risks or liabilities. Generally, it is the responsibility of the party relying on the clause to show that the words used are sufficiently explicit to exclude his liability for the event which has occurred. If the words are in any way ambiguous, they will be construed in favour of the other party and not the party who seeks to rely on it. In Andrews Bros (Bournemouth) Ltd v. Singer & Co Ltd [1934] 1 KB 17, The plaintiff contracted with the defendants to buy some "new Singer cars". One of the cars delivered by the defendants was a used car. Plaintiffs sued for damages and the defendants sought to rely on an exclusion clause in the contract which stated: "All conditions, warranties and liabilities, implied by statute, common law or otherwise are excluded." Defendants had, however, breached their express promise to deliver "a new Singer car." It was held that the buyers were entitled to damages because the contract was a contract for the sale of "new Singer cars" and the term "new Singer cars" was an express, and not an implied term of the contract and was, therefore, not excluded by the exclusion clause. Similarly, in the instant case, any ambiguity or omissions resulting from the wording of the contract shall be construed contra proferentem against the Defendant herein, since he drafted the contract. On the face of page three (3) of Exhibit 'A' series; the return on investment per acre being GHS 6,000.00, and the return on investment per acre for two (2) seasons (**WITH IRRIGATION**) \*emphasis mine\*, being GHS 12,000.00; presupposes that irrigation did not come at any extra cost. Further, since the Plaintiff was expecting a return on investment of GHS 12,000.00, per acre for two (2) seasons, it presupposes that the farming package was the one with irrigation in brackets. Therefore, from the above, since the Defendant failed to fulfill the terms of the agreement with the Plaintiff to cultivate a vegetable farm and a cocoa seedling farm; to pay a return on investment of GHS 12,000.00 to the Plaintiff; and failed to expressly include an exclusion clause to cover drought; the court holds that the Defendant is liable for a breach of the contract.

#### ISSUE 'C.'

Whether or not the Defendant is liable to pay a total amount of GHS 16,000.00 being sought by the Plaintiff in respect of Claims one (1) and two (2) of this action.

This court takes judicial notice of the fact that the calculation of a return on investment (ROI) includes the principal. Return on Investment (ROI) is a performance measure

used to evaluate the efficiency of an investment.<sup>1</sup> In the instant case, the expected return on investment per acre for two (2) seasons was supposed to be GHS 12,000.00. This amount includes the principal investment by the Plaintiff being GHS 8,000.00. Out of which the Defendant has paid an amount of GHS 4,000.00. In view of this, this court holds that the Defendant is liable to pay the amount of GHS 4,000.00 under claim one (1) of this action. However, under claim two (2) of this action; this court holds that the Defendant shall be liable to pay GHS 4,000 being the balance after deducting the principal of GHS 8,000.00 from the return on investment of GHS 12,000.00.

#### ISSUE 'D'

Whether or not the Defendant is liable to pay interest on the said amount of GHS 16,000.00 being claimed by the Plaintiff, from January 2021, till date of final payment.

Generally, under common law, interest becomes payable to a creditor/lender when the parties agree per their financial dealings that interest should be paid. However, under the laws of Ghana, the courts have the power to award interest on sums claimed and found to be due, or as prescribed by statute. This can be found in **Delle & Delle v Owusu - Afriyie [2005-2006] SCGLR 60 (holding 4)**; where the court held that "under the existing statutory regime in Ghana, the courts have the power to award interest on sums claimed and found to be due. Such interest is payable from the date on which the claim arose."

Further, per Order 28 r 7 of the District Court Rules, 2009 (C.I. 59)

- (1) The Court, at the time of giving judgement or making an order or anytime afterwards, may;
  - (a) Direct the time within which a payment is to be made or another act done, and
  - (b) Order the payment of interest at the same rate as a High Court may order in circumstances.
  
- (2) The time for payment shall be reckoned from the date of the judgement or order or from some other point of time that the Court considers appropriate.

Also, as established in the case of **Ghana Commercial Bank v Binoo - Okai [1982-83] GLR 74** and discussed by Adade CJ, in his judgement in the **Royal Dutch Airlines (KLM) v Farmex Ltd. [1989 - 90] 2 GLR, page 636**; A person who has unjustifiably

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<sup>1</sup> Brealey, R. A., Myers, S. C., & Allen, F. (2011). Principles of Corporate Finance. McGraw-Hill/Irwin series in finance, insurance, and real estate (10th ed.).



kept money which properly ought to have gone to its owner should not in justice be permitted to benefit by having that money in his possession and additionally enjoying the use of it. This benefit shall be deemed as profit lost to the owner that is usually ordered to be paid back to him by way of interest. This interest now becomes some kind of compensation or damages for withholding another person's money wrongfully.

However, it was held in **Akoto v Gyamfi - Addo [2005 - 2006] SCGLR 1018** that 'since interest is payable for unjustifiably keeping money belonging to another, if there is justification for keeping the money, interest is not payable.' It follows from this holding that the only basis upon which interest may not be payable on an amount established to be owed to the plaintiff in an action to recover same; is if the defendant is able to provide satisfactory justification to the court for keeping the plaintiff's money wrongfully.

From the above, in the determination of whether or not interest is payable to a creditor/lender, the courts must consider the following, in the absence of any enactment, instrument or agreement to the contrary.

- a. Whether or not there is a sum claimed and found to be due.
- b. Whether or not the said sum has been wrongfully withheld by the debtor/borrower.
- c. The amount of time for which the money has been wrongfully withheld, and
- d. Whether or not the debtor/borrower has any justification for wrongfully withholding the creditor/lender's money.

In the instant case; this court held that the Defendant is liable to pay a total amount of GHS 8,000.00 to the Plaintiff from reliefs one (1) and two (2) sought by Plaintiff.

However, the Defendant herein shall only be liable to pay interest on the said amount if he is unable to provide satisfactory justification to the court for keeping the plaintiff's money wrongfully. The Defendant claims he was unable to pay the said amount to the Plaintiff because the contract was frustrated by drought. This court held above that the defence of frustration shall not lie in this case because the drought is a possibility that should have been reasonably anticipated by the Defendant herein. In view of this, this court holds that the Defendant failed to provide any satisfactory justification for failing to pay the Plaintiff the return on investment of GHS 12,000.00 at the time it was due. Therefore, the Defendant herein is liable to pay interest on the principal amount of GHS 8,000.00 to the Plaintiff at the prevailing Bank of Ghana commercial interest rate from January 2021 till the date of final payment.

## ISSUE 'E'

### Whether or not the Plaintiff is entitled to General Damages.

Damages are essentially money paid to an innocent party to a contract or as compensation for a breach of said contract. The purpose of damages is to put the innocent party in the position that he would have been in, as far as money is concerned, had the breach or wrong not occurred. In determining whether a loss arose as a result of a breach, the courts consider whether the loss occurred in the ordinary course of things. In determining a loss that is reasonably foreseeable, the following has to be established; whether the loss arises in the ordinary course of things or whether the defaulting party had special knowledge that a loss may be incurred on account of a breach. The test for reasonable foreseeability is an objective test, meaning it is judged from the perspective of a reasonable man having all the facts. In **Klah v Phoenix Insurance Co Ltd [2012] 2 SCGLR 1139** the Akoto-Bamfo JSC opined that there “is a distinction exists between general and special damages: for whereas general damages arise by inference of law and therefore does not need to be proved by evidence; special damages representing a loss which the law will not presume to be the consequence of the defendant’s act but which depends in part , on special circumstances, must therefore be claimed on the pleading and particularised to show the nature and extent of damages claimed. The plaintiff must go further to prove by evidence that the loss alleged was incurred and that it was a direct result of the defendant’s conduct”. Also in **Bogoso Gold v Ntrakwa [2011] SCGLR 415**, the court held that special damages refers to “past pecuniary loss that was calculable at the date of trial while the term general damages related to all other items of damage whether pecuniary or non-pecuniary. In the instant case, the losses claimed by the plaintiff in the past were such that they could not have been precisely calculated by them. They were not anticipated and so equally incapable of being calculated at the date of trial; and thus, fell into the category of general damages since their right to the amount of damages was dependent on what the court thought was fair and reasonable.” In the instant case; this court found the Defendant liable for breach of contract. Since the breach could have been reasonably foreseen by the Defendant herein; this court holds that the Plaintiff is entitled to receive general damages as a result of said breach. In view of this, and in the interest of justice, this court holds that the Defendant is liable to pay general damages of GHS 4,000.00 to the Plaintiff.

## ISSUE 'F'

### Whether or not the Plaintiff is entitled to costs of litigation

In the interest of justice; no further orders shall be made as to costs.

From the above; this court orders as follows;

1. That the Defendant is liable to pay an amount of FOUR THOUSAND GHANA CEDIS GHS 4,000.00 to the Plaintiff with immediate effect; being the balance on the principal amount of GHS 8,000.00 received by the Defendant.
2. That the Defendant is liable to pay an amount of FOUR THOUSAND GHANA CEDIS (GHS 4,000.00), being Plaintiff's being return on Plaintiff's investment; with immediate effect.
3. That the Defendant is liable to pay interest to the Plaintiff, calculated at the prevailing commercial bank lending rate, on the amounts stated in reliefs '1' and '2', from January 2021, till date of final payment; being GHS 8,000.00.
4. That the Defendant is liable to pay general damages of GHS 4,000.00 to the Plaintiff for breach of contract; with immediate effect.
5. No further orders shall be made as to costs.

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HER WORSHIP SIRAN MAHAMA  
MAGISTRATE  
03/07/2023