



3/16/2023

**EMELIA KWARTENG  
VS.  
SANDRA ACHEAMPONG**  
JUDGEMENT



**HER WORSHIP SIRAN MAHAMA  
TEMA DISTRICT COURT '2'**

**IN THE DISTRICT COURT 2, TEMA, SITTING ON  
THE 16<sup>TH</sup> DAY OF MARCH, 2023 BEFORE HER  
WORSHIP SIRAN MAHAMA, THE DISTRICT  
MAGISTRATE.**

**SUIT NO. A9/03/2023**

**EMELIA KWARTENG  
VS.  
SANDRA ACHEAMPONG**

**JUDGEMENT ON CLAIM (B)**

The claim upon which this judgement is written is as follows.

**CLAIM (B):** - Compensate Complainant adequately for the inconvenience caused all these months.

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 Bino - 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 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, the defendant herein gave a plea of liable on claim 'a' of this action; accepting liability for owing an amount of GHS 7,200 to the Plaintiff herein; being rent advance. Based on this, this court proceeded to enter a judgement on admission in favour of Plaintiff on Claim 'a' of this action. However, according to the evidence-in-chief of the Plaintiff on Claim 'b'; the amount under Claim 'a' became due because she rented a shop from the Defendant but decided a week later that she was no longer interested in the shop because another person had opened a shop with the same business closer to the roadside. According to the Plaintiff, due to this, she decided that her business idea would no longer be viable and decided she was no longer interested in renting the Defendant's shop; and informed the Defendant accordingly.

On the other hand, per the Defendant's evidence-in-chief on Claim 'b' of this action; the Defendant says that she did not anticipate that the Plaintiff would change her mind on renting her shop; so, she used the rent advance of GHS 7,200.00 to repay a loan she secured to purchase the shop. In view of this, the only means of repaying the rent advance to the Plaintiff at that time would have been to rent to shop to a new tenant and use the rent proceeds to repay the Plaintiff at the time. However, unfortunately, the Defendant was unable to get a new tenant to rent the shop at the time. That's why Defendant couldn't repay the rent advance of GHS 7,200 to the Plaintiff at the time.

Considering the testimony of both parties; this court is of the view that the Defendant failed to repay the Plaintiff the rent advance due at the time the Plaintiff changed her mind because the tenancy agreement was frustrated by the abrupt change in the Plaintiff's decision to rent the shop. This is because the Defendant herein couldn't have reasonably foreseen that the Plaintiff would change her mind; considering that the Defendant fulfilled her part of the agreement by yielding possession of the shop to the Plaintiff on the terms agreed to at that time. In view of this, this court holds that it would be unjust to impose interest on the principal amount payable to the Plaintiff by the Defendant; considering that the contract was frustrated at the instance of the Plaintiff and not the Defendant. The reason given by the Plaintiff for no longer wanting to rent the shop being that someone else opened a similar shop could not have been reasonably foreseen by the Defendant herein since it was out of her control.

If a tenant wishes to terminate a contract; he must inform the landlord in advance; acting in good faith. In most cases, the tenant must look for someone to take over the lease for the duration of the contract or wait for the repayment since the landlord may have invested or spent the money already. Therefore, in such instances the landlord shall be entitled to equitable reliefs under the doctrine of frustration. 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.

Hence, if a tenancy agreement does not contain a force majeure clause, then the innocent party may refer to the doctrine of frustration to relieve from liability. The doctrine of frustration is essentially a situation in which one party finds that they are unable to fulfil their contractual obligation by no fault of their own because it has become impossible to do so. This means that the Defendant herein has shown sufficient justification for withholding the rent advance of GHS 7,200.00 payable to Plaintiff all this time.

In view of the above, this court holds that the Defendant herein, is not liable to pay compensation or interest to the Plaintiff herein under Claim 'b' of this action.

Judgement on Claim 'b' is hereby entered in favour of Defendant herein.

In the interest of justice; no orders shall be made as to cost in this matter.

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HER WORSHIP SIRAN MAHAMA  
MAGISTRATE  
16/03/2023