

IN THE DISTRICT COURT HELD AT WEIJA, ACCRA ON WEDNESDAY THE 21ST
DAY OF JUNE, 2023 BEFORE HER WORSHIP RUBY NTIRI OPOKU (MRS),
DISTRICT MAGISTRATE

SUIT NO. G/WJ/DG/A2/04/2022

ALFRED BAFFOE

PLAINTIFF

VRS

NANA NYARKO

DEFENDANT

PARTIES ARE PRESENT AND SELF REPRESENTED

JUDGMENT

The plaintiff filed a writ of summons at the registry of this court on 14th October 2021 against the defendant for the following reliefs;

- i. An order directed at the defendant herein to provide the new engine of the car to enable the plaintiff finish the contract agreed upon.
- ii. Or alternatively, defendant is to pay for sales of work done for the period of 2 years 3 months (i.e. GHC400.00 per week)
- iii. Refund of costs of expenses incurred on the car (i.e. maintenance work, renewal of road worthy and insurance)
- iv. Damages for breach of contract
- v. Costs and any further orders as the honourable court may deem fit.

The defendant filed a defence on 9th November 2021

On 24th November 2021, parties were referred to the court connected alternative dispute resolution (CCADR) to attempt settlement of the dispute however they were unable to settle and therefore the court set down the matter for trial.

THE CASE OF THE PLAINTIFF

It is the case of the plaintiff that he entered into a work and pay agreement with defendant on 30th March 2019. It is his further case that per the terms of the agreement of the parties, the purchase price of the vehicle was GHC57, 000.00

It was agreed that plaintiff pays a deposit of GHC4, 000.00 after which the balance outstanding was to be paid with weekly sales of GHC400.00 till the total amount was defrayed.

Plaintiff added that in all he paid the total sum of GHC49, 000.00 to the defendant leaving a balance of GHC7, 800.00 unpaid.

According to him, during the subsistence of the agreement, the engine of the car developed a mechanical fault on 28th May 2021 and it was a term of the agreement that defendant will replace the old engine in the event where the engine became faulty. However defendant refused to replace same and insisted that he would only give him an engine after full payment of the purchase price of the vehicle or in the alternative, he will sell off the vehicle and pay him off.

He averred that the defendant has towed the vehicle to his house and has since refused to purchase a new engine for the vehicle despite several demands made on him and complaints lodged with the Commission on Human Rights and Administrative Justice (CHRAJ)

In support of his claim, plaintiff tendered the application/agreement form given to him by the defendant and filed on 11th October 2021, letter from CHRAJ dated 15th September

2021, sales records from 30th March 2019 to 1st May 2021 as well as records of expenditure made on the vehicle from 27th April 2019 to 5th February 2021. The exhibits were all admitted without objection and marked as Exhibits A, B, C series and D series respectively.

He prayed the court to grant his reliefs.

THE CASE OF THE DEFENDANT

It is the case of the defendant that plaintiff called him on phone on 18th September 2018 and requested to purchase his vehicle on a work and pay basis following a referral from one Enoch.

It is the further case of the defendant that plaintiff followed up to his house with three of his siblings and deposited the sum of GHC4,000.00 as initial deposit for the car with the agreement that the car will be delivered to him within a period of three months.

He was unable to deliver the car to the plaintiff as agreed and so he refunded the money back to the plaintiff with NIB cheque of GHC4, 000.00 which was withdrawn by plaintiff's brother Richard.

He added that subsequently, plaintiff called him on telephone and he told him that he now had some cars in his possession and that plaintiff could come for one on a work and pay basis.

He averred that he told plaintiff about the terms and conditions of buying the car after which plaintiff paid the sum of GHC400.00 plus a carton of voltic mineral water to him for registration and also paid the sum of GHC3, 000.00 as initial deposit for the vehicle.

According to him, plaintiff's mother called him and pleaded with him to release the vehicle to her son as they were expecting some money. He averred that Plaintiff

subsequently added an additional sum of GHC1, 000.00 to the deposit paid earlier increasing the total deposit paid to GHC4, 000.00

Defendant added that he gave out the vehicle to the plaintiff on 6th April 2019 and it was agreed that payments for the vehicle was to be completed by first week of January 2022.

Defendant averred that plaintiff was not consistent with payments of the monies and on 27th March 2021, plaintiff informed the defendant that the car was faulty and because he was preoccupied with other chores, he could not give him the needed attention.

It was after two months when he needed money to invest in his business that he decided to sell off the vehicle, take his share and pay for costs incurred by the plaintiff however plaintiff refused to show him the whereabouts of the vehicle and instead threatened to kill him and his family.

He added that he lodged a complaint against plaintiff at SCC police station on 1st June 2021 where the plaintiff promised to give him money within a period of two weeks to enable him purchase an engine for the vehicle. Later on, plaintiff informed him that he had been advised by his lawyers to sue him in court.

Thereafter plaintiff refused to take his calls and will not show him the whereabouts of the car until he saw the car parked at an auto mechanic shop on his way to see an uncle at Pokuase. He subsequently towed the vehicle to his house.

He concluded by stating that to the best of his knowledge, plaintiff had worked with the vehicle for one year 11 months totalling GHC36,800.00 and if his deposit of GHC4,000.00 is added he would have made a total of GHC40,800.00 leaving a balance of GHC16,200.00 unpaid.

He added that once the sum of GHC16,200.00 was defrayed, he would buy the plaintiff a new engine. He stated that due to the threats issued by the plaintiff, he is not interested

in doing business with him and prays the court to order the vehicle to be sold and proceeds from same shared between the parties having regard to their investments made in the vehicle.

In support of his claim, he tendered records of sales from 6th April 2019 to 6th March 2021. He also tendered some agreements signed by one Simon Ansah and Nhyira Richmond and an unsigned agreement purported to be the agreement reached between the parties. Plaintiff objected to the tendering of Exhibit 1 and demanded that defendant exhibits the original sales records. Defendant informed the court that he was unable to tender the original because he had misplaced same in a taxi. His Exhibits were marked as Exhibits 1 and 2 series respectively.

ISSUES

At the end of the pleadings and evidence before the court, the following issues were set down for determination;

1. Whether or not there was any agreement between the parties? and if so whether or not plaintiff is entitled to a new engine?.
2. Whether or not the defendant is entitled to tow the vehicle to his house and deny plaintiff access to same
3. Whether or not plaintiff has paid a total sum of GHC49,200.00 to the defendant and whether or not he is entitled to a refund of same in the alternative?

BURDEN OF PROOF

It is trite that in civil matters, the burden of persuasion requires proof by a preponderance of probabilities.

Sections 10 (1) and (2), 11(1) and (4) as well as 14 of the Evidence Act, 1975 (NRCD 323) provides respectively as follows;

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 establishes the existence or non-existence of a fact by a preponderance of probabilities or by proof beyond reasonable doubt.

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 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.

12. (1) Except as otherwise provided by law, the burden of persuasion requires proof by a preponderance of 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.

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.

In **ACKAH V PERGAH TRANSPORT LTD [2010] SCGLR 728 AT 736**, Sophia Adinyira JSC held as follows;

“It is a basic principle of the law on evidence that a party who bears the burden of proof is to produce the required evidence of the facts in issue that that has the quality of credibility short of which his claim may fail. The method of producing evidence is varied and it includes the testimonies of the party and material witnesses, admissible hearsay, documentary and things (often described as real evidence) without which the party might not succeed to establish the requisite degree of credibility concerning a fact in the mind of the court or tribunal of fact such as by producing sufficient evidence so that on all the evidence, a reasonable mind could conclude that the existence of the fact is more reasonable than its non-existence.”

THE COURT’S ANALYSIS AND OPINION

Issue one

From the evidence and the pleadings before this court, the defendant gave his vehicle to the plaintiff at a cost of GHC57, 000.00 on a “work and pay basis” with the understanding that plaintiff was to pay a deposit of GHC4, 000.00 and thereafter work with the vehicle and pay the outstanding balance of GHC53, 000.00 with weekly sales of GHC400.00

From the facts, I find that there was a conditional sale agreement between the parties which is governed by the Hire Purchase Act 1974 (NRCD 292).

Section 24 of NRCD 292 provides as follows;

“Conditional sale agreement means an agreement for the sale of goods under which the purchase price or part of it is payable by instalments, the property in the goods is to remain in the seller although that the buyer is to be in possession of the goods and under which certain conditions specified in the agreement are to be fulfilled by the buyer”

In **KWARTENG V SEI [1966] G.L.R 42-50**, Djabanor J explained “work and pay basis” as follows;

“...that the vehicle was given to him on what is popularly known as “work and pay basis”. In effect, this is a system by which the owner of a vehicle gives the vehicle over to another usually a driver on the understanding that the latter works with the vehicle by driving it for hire by passengers or their goods or both and pays the earnings or a greater portion of them to the owner until the agreed price has been paid after which as was the case here the vehicle is properly transferred to the driver”.

In the instant matter, it is not disputed that part of the purchase price was to be paid by instalments whilst the property in the vehicle remain with the defendant till the plaintiff pays the full cost of the vehicle before title will pass to the plaintiff.

I find however from the facts and the evidence before this court that defendant did not comply with sections 1, 2 and 3 of NRCD 292 by reducing the agreement between the parties into writing and as a result the defendant is not entitled to enforce the agreement.

Section 1 of NRCD 292 provides as follows;

“where goods are let under a hire purchase agreement or are sold under a conditional sale agreement, the owner or seller shall not be entitled to enforce the agreement unless;-

- (a) The agreement is in writing and signed by the hirer or buyer and by or on behalf of all other parties to the agreement and
- (b) The requirements of sections 2 to 4 are complied with.

Sections 2 and 3 of NRCD 292 provides as follows;

2. That before any agreement is made, the seller or owner shall state orally and in writing to the prospective buyer or hirer (otherwise than in the agreement referred to in section 1) the price at which the goods may be purchased by him for cash(in this Decree referred to as the “cash price”) and the hire purchase price as the case may be)

3. (1) Every agreement shall contain
 - (a) a statement of the cash price and the hire purchase price or total purchase price as the case may be of the goods
 - (b) the amount of each instalment by which the price is to be paid and the date or the mode of determining the date upon which each instalment is payable;
 - (c) a description or list of the goods which the agreement relates sufficient to identify them
 - (d) a notice which is at least as prominent as the rest of the contents of the agreement in the terms set out in the first and second schedule to this Decree
- (2) A copy of the agreement shall be delivered or sent to the hirer or buyer within 14 days after the making of the agreement.

Defendant only produced some agreements made with other clients and an unsigned agreement which were admitted in evidence without any objection and marked as Exhibit 2 series.

The court however did not place any weight on Exhibit 2 series as same did not satisfy the requirements of NRCD 292.

The only relevant document that could be relied on by the court in settling the issue of the purchase of an engine was Exhibit A which is a registration form given to the plaintiff by the Defendant.

Clause 9 of Exhibit A provides as follows;

“If the car is damaged, the driver would be held responsible to repair it. The car owner would only fix a new engine for you and take the old engine.

From the pleadings and the evidence before the court, Defendant does not dispute the fact that he has to provide a new engine for the plaintiff save that he claims it was agreed

between the parties that a new engine will be provided on full payment of the purchase price which assertion is vehemently denied by the plaintiff.

Defendant did not lead any evidence by way of a written agreement to prove his assertion.

I find from Exhibit A that in the event where the vehicle is damaged, plaintiff shall be liable for repairs whilst defendant provides a new engine for the defendant. It does not provide that the engine is to be purchased when plaintiff has made full payment of the purchase price of the vehicle.

From the facts, the vehicle is damaged and needs an engine and as a result I hold that defendant complies with Exhibit A and provide plaintiff with a new engine.

Issue two

The next issue to consider is whether or not defendant had a right to tow the faulty vehicle to his house and deny plaintiff access to same.

Section 4 of NRCD 292 provides as follows:

4. Any provision in a hire purchase or conditional sale agreement shall be void to the extent that it provides that-

(a) An owner or seller or any person acting on his behalf is authorised to enter upon any private land or premises for the purpose of taking possession of goods which have been let under a hire purchase agreement or sold under a conditional sale agreement or is relieved from the liability for such an entry

Section 8 of NRCD 292 provides;

(1) The owner or seller shall not enforce any right to recover possession of protected goods from the hirer or buyer otherwise than by an action

(4) "Protected goods" are goods in relation to which the following conditions are fulfilled

(a) that the goods have been let under a hire purchase agreement or sold under a conditional sale agreement

(b) that one half of the hire purchase price or total purchase price has been paid

Plaintiff testified that he has paid a total sum of GHC49,200.00 to the defendant whilst defendant contends that plaintiff has paid a total of GHC42,500.00 to him.

Applying the law cited supra to the facts of the case, I find that plaintiff has paid more than half of the purchase price of the vehicle and as a result defendant's act of towing the vehicle to his house was in contravention of the law.

Issue three

Plaintiff contends that he worked for a total of 113 weeks and paid GHC400.00 weekly to the defendant. If the deposit of GHC4, 000.00 is added to the total sales, he would have made a total of GHC49, 200.00

He tendered Exhibit B in evidence to show sales recorded by him from 6th April 2019 to 29th May 2021.

Defendant contends that plaintiff worked for one year eleven months and made a total of GHC42, 500.00 inclusive of the GHC4, 000.00 deposit made to him. Under cross examination, he informed the court that he had misplaced his record book and unable to tender same in evidence. Plaintiff pointed out to him that when he compares defendant's

Exhibit 1 series to his Exhibit B, it is evident that defendant had deleted certain portions of Exhibit 1 series.

The following is what defendant had to say;

Q: I put it to you that at the time we went to see the mediator, you had cancelled out some of the sales I had made

A: Yes that is so

In the case of **In RE ASERE STOOL; NIKOI OLAI AMONTIA IV (SUBSTITUTED BY TAFO AMON II) V AKOTIA OWORSIKA III (SUBSTITUTED BY LARYEA AYIKU III) [2005-2006] SCGLR 637**, the Supreme Court held as follows;

“Where your adversary has admitted a fact advantageous to your cause, what better evidence do you need to establish that fact than relying on his own admission?”

Defendant sought to justify the figures he had presented to the court by stating that plaintiff paid a total deposit of GHC3, 200.00 leaving a balance of GHC800.00 outstanding. He also indicated that during the period of the lockdown, plaintiff did not make two weeks sales to him and also owes him three weeks sales for the period when the vehicle was parked. All these allegations were a clear departure from his pleadings as he had admitted in his pleadings that plaintiff paid an initial deposit of GHC3, 000.00 to him and subsequently topped up with the sum of GHC1, 000.00

He never stated that the plaintiff owed him any sales in his pleadings.

In **ODUPONG V THE REPUBLIC [1992-1993] 3 GBR 1028 – 1048 CA**, Brobbey J.A (as he then was) delivered himself as follows;

“The law is now settled that a person whose evidence on oath is contradictory of a previous statement made by him whether sworn or unsworn is not worthy of credit and

his evidence cannot be regarded as being of any probative value in the light of his previous contradictory statement unless he is able to give a reasonable explanation for the contradiction.”

Applying the law cited supra to the facts and evidence of this case, I find that defendant is not worthy of credit and as a result will not place any probative value on his evidence in light of the contradictions in his statements.

I find the story of the plaintiff to be more plausible having regard to exhibit B series. I hold therefore that on the balance of probabilities, plaintiff has proved that he made sales of GHC400.00 for 113 weeks bringing the total sales to GHC45, 200.00. This amount added to the initial deposit of GHC4, 000.00 brings the total sum to GHC49, 200.00

From the totality of the evidence before this court, I find that plaintiff has proved his case on the balance of probabilities against the defendant.

Decision

Accordingly, defendant is ordered to provide plaintiff with a new engine to enable him complete payment of the outstanding purchase price of the vehicle or in the alternative, defendant shall pay the total sum of GHC49, 200.00 together with interests at the prevailing commercial bank rate from the date of judgment to the date of full and final settlement of the said sum.

Costs of GHC2, 000.00 is awarded in favour of the plaintiff against the defendant.

RUBY NTIRI OPOKU (MRS.)

DISTRICT MAGISTRATE