

CORAM: HER WORSHIP AMA ADOMAKO-KWAKYE (MS.), MAGISTRATE,  
DISTRICT COURT '2', KANESHIE, SITTING AT THE FORMER STOOL LANDS  
BOUNDARIES SETTLEMENT COMMISSION OFFICES NEAR WORKERS'  
COLLEGE, ACCRA ON 30<sup>TH</sup> JANUARY, 2024.

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SUIT NO. A2/130/22

GEORGE OFORI

UNNUMBERED HOUSE

SHIABU-AGEGE

ACCRA

::

PLAINTIFF

VRS.

MADAM ELIZABETH KYEREWAA

SHUKURA, ACCRA

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DEFENDANT

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## JUDGMENT

### INTRODUCTION

Per a Writ of Summons issued by the Plaintiff on 20<sup>th</sup> January, 2022, the Plaintiff claimed against the Defendant the following reliefs:

- “a. An order directed at the Defendant to release car with registration number GR 4996-19, Kia Matis 3 mode to the Plaintiff.*

- b. *An order directed at Defendant to refund an amount of GH¢3,200.00 being 60 days the Defendant used the car for commercial purposes without rendering account to the Plaintiff.*
- c. *General damages for breach of contract.*
- d. *Cost.*

### PLAINTIFF'S CASE

It is the Plaintiff's case that he entered into a 'work and pay' agreement with the Defendant in respect of her Kia Matis 3 with Registration Number GR 4996-19 on or about 10<sup>th</sup> February, 2019. Per the terms of the agreement, the total cost of the vehicle was GH¢40,000.00 and he was required to make weekly sales of GH¢400.00 for a period of two years to complete the payment after which the Defendant would issue a receipt covering the total payment made to her and subsequently transfer ownership to him.

According to Plaintiff, he took possession of the vehicle and began working with it, making a total sales of GH¢32,750.00 to the Defendant with an outstanding balance of GH¢7,250.00 to complete the payment for the vehicle. He stated further that few days after making the payment, the vehicle's engine broke down and he immediately informed the Defendant about same. However, Defendant refused to provide money or assist him with the repairs so he sought assistance elsewhere to fix the engine and made final sales of GH¢7,250.00 to Defendant.

Plaintiff alleged that Defendant refused to accept the GH¢7,250.00 but forcefully took possession of the vehicle from him. Plaintiff averred that Defendant has breached the agreement the parties entered into and until this Honourable Court compels her to return the vehicle to him, Defendant will continue to infringe on his rights.

## DEFENDANT'S CASE

According to the Defendant, as at 31<sup>st</sup> March, 2021, a month after the date on which Plaintiff ought to have completed the payment for the vehicle per the terms of their agreement, Plaintiff had not finished paying the full amount as the amount paid then was GH¢30,450.00. Defendant further added that even before the expiration of the two years, she was not hearing from the Plaintiff and had therefore asked Agyei, the person through whom she got to know the Plaintiff, to produce him.

She averred that when Plaintiff eventually showed up in the company of Agyei, he pleaded with her for an extension of six months within which to finish paying for the vehicle and out of generosity, she granted his request. Defendant asserted that upon the expiration of the six months, Plaintiff had paid only GH¢32,750.00. It was Defendant's case that Plaintiff again came with Agyei after the expiration of the six months to claim that the engine of the vehicle had broken down and therefore needed an amount of GH¢2,000.00 to fix it. Defendant averred that she gave Plaintiff the amount plus a gallon of engine oil as he requested in the presence of Agyei.

Defendant alleged that after Plaintiff claimed to have fixed the vehicle, she gave him three more months to finish paying for the vehicle. It was Defendant's case that during this period she did not hear from Plaintiff neither did Plaintiff answer her calls. She therefore threatened Agyei with police arrest since he was the one who introduced Plaintiff to her. She denied ever refusing to accept the amount of GH¢7,250.00 Plaintiff claims he offered to her. Defendant asserted that assuming without admitting that she rejected the supposed GH¢7,250.00 from the Plaintiff, she was well within her right to have done same since the Plaintiff had breached the agreement between them several times. She averred that she would return the vehicle on the condition that the Plaintiff pays the

outstanding amount of GH¢9,250.00 with interest thereon from 10<sup>th</sup> February, 2021 to the date of final payment.

### ISSUE

Although Counsel for both parties have in their respective Addresses raised some issues which in their opinion need to be resolved, I find the germane issue for determination by this Court to be whether or not there has been a breach of the agreement between the parties by any of the parties. This would subsume the issue of alleged seizure of the vehicle. A determination of the main issue would lead to a conclusion on whether the Plaintiff is entitled to the reliefs he seeks from this Court or not.

### LEGAL ANALYSIS AND EVALUATION OF EVIDENCE

It is the duty of a Plaintiff to prove his or her case for a determination to be made in his/her favour. A party who raises issues essential to the success of his/her case assumes the onus of proof and as such a person who alleges, whether a plaintiff or a defendant, assumes the initial burden of producing evidence. It is only when such a person has been successful in producing evidence that the other party will be required to lead rebuttal evidence, if need be. In the case of **T. Chandiram v. Tetteh [2018] 120 GMJ 112 @ 147 C.A**, Her Ladyship Agnes M. A. Dordzie, J.A (as she then was) noted on the standard of proof in civil cases as follows:

“[T]he standard of proof in a civil suit is placed on the ‘balance of probabilities. Section 12 (2) of the Evidence Act defines it as follows: “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.”

Again, in the case of **Agbosu v Kotey; In Re Ashalley Botwe Lands [2003-2004] SCGLR 420**, His Lordship Brobbey, JSC (Rtd.) noted:

“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... At the same time if the court has to make a determination of a fact or of an issue, and that determination depends on the evaluation of facts and evidence the defendant must realize that the determination cannot be made on nothing. If the defendant desires a determination to be made in his favour, then he has a duty to help his own cause or case by adducing before the court such facts or evidence that will induce the determination to be made in his favour...”

The Plaintiffs therefore have the responsibility of adducing evidence which is sufficient enough to avoid a ruling against them on the issues before the Court. See also the following cases:

**Takoradi Flour Mills vs. Samir Faris [2005-2006] SCGLR 882 @ 900**

**GIHOC Refrigeration & Household vs. Jean Hanna Assi (2005-2006) SCGLR 458**

**Tagoe v. Accra Brewery [2016] 93 GMJ 103 S.C**

**Deliman Oil v. HFC Bank [2016] 92 GMJ 1 C.A.**

**Baker-Woode v Nana Fitz [2007-2008] SCGLR 879**

**Ababio v Akwesi III [1994-95] GBR 774**

**Air Namibia v. Micon Travel [2015] 91 GMJ 173 @ 191 C.A**

The Plaintiff therefore had the onus of discharging the burden of producing sufficient evidence in respect of his claims on a balance of probabilities. In his evidence in chief by

way of Witness Statement filed on 20<sup>th</sup> April, 2022, Plaintiff testified that he entered into a vehicle work and pay agreement with the Defendant in respect of her Kia Matis 3, registered as GR 4996-19. Per the terms of the agreement, he was to make weekly sales of GH¢400.00 for a period of two years, with the total cost of the vehicle being GH¢40,000.00 after which the Defendant would issue a receipt covering the total payment made to her. Plaintiff tendered in evidence Exhibit 'A', a copy of the agreement entered into by the parties.

Plaintiff further testified that he made a total payment of GH¢32,750.00 to the Defendant leaving an outstanding balance of GH¢7,250.00 to complete the payment for the vehicle. He tendered in evidence documents covering the daily payments he made to the Defendant as Exhibit 'B'. It was Plaintiff's testimony that few days after he made the said payment, the engine of the vehicle broke down and he immediately informed the Defendant about same. However, Defendant refused to assist him with the repairs. He therefore had to seek assistance elsewhere to repair it at a cost of GH¢2,800.00. He testified further that he was not able to make the final sales of GH¢7,250.00 only because of the issue with the car and Defendant's refusal to assist him. According to Plaintiff, Defendant refused to accept the GH¢7,250.00 but forcefully took the vehicle from him and it has been with the Defendant for a period of 152 days starting from 19<sup>th</sup> November, 2021, he testified.

Respondent on the other hand testified by relying on her witness statement filed on 27<sup>th</sup> July, 2023 and same was adopted by the Court as her evidence in chief. She testified that Plaintiff was required under their agreement to finish paying the price within two years by making daily sales of GH¢400.00. She also tendered in evidence a copy of the said agreement as Exhibit '1'.

It was Defendant's testimony that as at 31<sup>st</sup> March, 2021, a month after the date on which Plaintiff ought to have completed the payment for the vehicle, Plaintiff had not finished paying the full amount for the vehicle. The total amount paid as at that time was GH¢30,450.00. She testified further that even before the expiration of the two years, she was not hearing from the Plaintiff. As such, she sought Plaintiff from one Agyei since the latter introduced the parties. Defendant testified that Plaintiff finally showed up in the company of Agyei and pleaded for an extension of six months to finish paying for the vehicle which she agreed.

According to Defendant, upon the expiration of the six months, Plaintiff had made a total of GH¢32,750.00. She tendered in evidence a document evidencing the payments made by Plaintiff as Exhibit '2' series. She stated that after the six months lapsed, Plaintiff came with Agyei to see her to report that the engine of the vehicle had broken down and therefore he needed an amount of GH¢2,000.00 to fix it. Defendant testified that she gave Plaintiff the amount together with a gallon of engine oil in the presence of Agyei. She testified further that she gave Plaintiff three more months to finish paying for the vehicle.

However, during this period, she did not hear from Plaintiff and she therefore threatened Agyei with police arrest since he was the one who introduced Plaintiff to her. According to Defendant, she did not refuse to accept any amount from Plaintiff. She further testified that in their agreement, it was agreed that ownership of the vehicle will only be transferred to Plaintiff after he has made full payment within the time stipulated.

The legal framework for hire purchase transactions provides the avenue for a person who wants to buy goods but does not have the cash price to enter into an agreement with the owner of the goods to let the goods under hire with a view to ultimately purchase the goods at the end of the transaction. **Section 24 of the Hire Purchase Act, 1974 (NRCD 292)** defines hire purchase agreement as:

*“an agreement for the bailment of goods under which the bailee may buy the goods or under which the property in the goods will or may pass to the bailee; and where by virtue of two or more agreements, none of which by itself constitutes a hire-purchase agreement there is a bailment of goods and either the bailee may buy the goods or the property in them will or may pass to the bailee the agreements shall be treated for the purposes of this Act as a single hire-purchase agreement made at the time when the last of the agreements was made”*

From the evidence adduced before this Court, it is clear from Plaintiff’s Exhibit ‘A’ and Defendant’s Exhibit ‘1’ that the Defendant agreed to sell her vehicle to the Plaintiff at a hire purchase or a total price of GH¢40,000.00 and that the Plaintiff was to pay an amount of GH¢400.00 a month towards the total price for a period of two years, one month with the understanding that upon the full payment of the total price of the vehicle, the ownership in the vehicle would be transferred to the Plaintiff. With this understanding therefore, the vehicle was handed over to the Plaintiff to enable him work with it and pay the monthly instalment. The requirement for there to be a valid hire purchase agreement under **Section 3 of the Hire Purchase Act, 1974 (NRCD 292)** was satisfied.

From the evidence on record, the date on which the agreement was entered into by the parties has not been in dispute. Plaintiff has always stated that the parties entered into the agreement on 10<sup>th</sup> February, 2019, the Defendant has admitted this and their Exhibits ‘A’ and ‘1’ confirm this as well. In fact, when Plaintiff was questioned by Counsel for the Defendant in respect of this, Plaintiff confirmed same. This is what happened under cross examination:

*Q: You entered into the agreement on 10<sup>th</sup> February, 2019. Is that correct?*

*A: That is so.*

It is therefore surprising that Counsel for the Plaintiff in his Address filed on 18<sup>th</sup> October, 2023 suggests that the parties entered into the said agreement on or about 10<sup>th</sup> April, 2019. Counsel's argument is not borne out of the evidence on record before the Court. It is a fact that the Plaintiff was required under the agreement to make weekly payment of GH¢400.00 to the Defendant. He however defaulted in the weekly payments. This is what happened under cross examination of Plaintiff by counsel for the Defendant:

*Q: Per your own Exhibit B, you had only paid GH¢32,750.00 as at 31<sup>st</sup> March, 2021. Is that correct?*

*A: Yes please.*

*Q: Again, the last sales you made in 2019 was on 2<sup>nd</sup> December, 2019. Is that correct?*

*A: Unless I cross check please (Plaintiff is permitted to check his Exhibit B). That is correct.*

*Q: The next payment you made after that was 6<sup>th</sup> May, 2020. Is that so?*

*A: That is so.*

*Q: So from January 2020 to April 2020, you denied Defendant weekly sales which she was entitled to as the owner of the vehicle. Is that not so?*

*A: That is true but I have an explanation. The car was faulty and we were also in the Covid 19 era. I told Defendant the engine was faulty and she said the time she gave me was up so she would not extend the duration and if she would extend the duration, then she would not buy the engine for me and I would have to buy it myself. During that time, I wanted money to buy the engine so I parked the car but I informed her.*

On this aspect of the matter, Counsel for the Plaintiff argued that the pandemic hindered Plaintiff from honouring his weekly payment obligation to the Defendant. As such, the performance of his obligation under the agreement was made impossible by reason of frustration. It is however important that I mention at this stage that Plaintiff did not in

either his Writ with the particulars of claim setting out his case nor his witness statement, which was adopted as the entirety of his evidence-in-chief, state anywhere that the COVID-19 made it impossible for him to perform his obligations under the agreement. Indeed, frustration, and particularly this new line of argument had at no point been part of the Plaintiff's case and I therefore find the seemingly solace in this excuse disingenuous and clearly an afterthought.

I commend Counsel for the Defendant for the industry he put in his Written Address filed on 19<sup>th</sup> January, 2024. Counsel for the Defendant drew the Court's attention to the fact that the Imposition of Restrictions (Coronavirus Disease (COVID-19) Pandemic) Instrument, 2020 (E.I. 64 of 2020) commenced on 23<sup>rd</sup> March, 2020. As a matter of fact, the lockdown on Greater Accra and Greater Kumasi Metropolitan areas commenced on 30<sup>th</sup> March 2020. Meanwhile, Plaintiff had defaulted in his weekly payments from January, 2020 to the 23<sup>rd</sup> of March, 2020 when the imposition of restrictions first came into force. Even with that, public and private commercial transport were exempted from the restrictions imposed by E.I 64 by virtue of section 4 and 7 of the instrument. Thus, Plaintiff's attempt to rely on the pandemic as a reason for his failure to perform his obligations under the agreement is untenable, and only used as a device to deceive the Court.

There is ample evidence on record that the Plaintiff defaulted in paying the weekly sales and also failed to pay the purchase price in full in accordance with the agreement entered into by the parties. It is worthy of notice that under a hire purchase agreement, it is the right of the owner to receive the installment payments when it falls due. It is therefore the duty of the hirer to pay all the installment when they fall due. A breach of the agreement by the hirer entitles the owner to seek for compensation for the breach.

Again, Plaintiff testified that the engine of the vehicle broke down which also made it impossible for him to make the weekly payments. Plaintiff added that it was particularly because the Defendant failed to give him money to buy a new engine as agreed upon in clause 6 of Exhibit 'A'. However, under cross examination of Plaintiff by counsel for the Defendant, Plaintiff contradicted and betrayed himself as a dishonest person. Plaintiff's answers confirmed Defendant's position that he was given an amount of GH¢ 2,000.00 and engine oil when Plaintiff reported the issue to her. This is what transpired under cross examination:

*Q: You told the Court that Defendant's husband gave you GH¢2,000.00 and a gallon of engine oil to replace the broken down engine, is that correct?*

*A: That is correct. That is what I said. The GH¢2,000.00 was a loan with interest.*

*Q: Have you paid the said amount to Defendant's husband?*

*A: No. I have not paid because when we sent the balance, that money was part but they refused to take it.*

It is therefore clear from this piece of evidence that Plaintiff's failure to make the payments was not as a result of faulty engine since he was given money to replace the faulty engine. It is important to note that even after the two years, one month period expired, Defendant gave Plaintiff an extension of time within which to pay the purchase price yet Plaintiff was unable to fully pay the purchase price. Below is what happened under cross examination of Plaintiff by counsel for the Defendant:

*Q: After the expiration of the two years and one month as stated in the agreement, the Defendant gave you a further six months extension to complete payment. Is that correct?*

*A: Yes that is so. Defendant said if she would extend then she would not buy the engine.*

The Plaintiff from his own response therefore even knew that he had to buy the engine himself if there was to be an extension of the period for him. He therefore cannot even use the excuse of the Defendant not providing an engine as a basis for his default and blatant breach of the agreement between the parties. In the opinion of the Court, Plaintiff was afforded every opportunity by the Defendant to complete the payment for the vehicle yet Plaintiff was consistent in the breach of the weekly payment.

Plaintiff alleged that the Defendant seized the vehicle making it impossible for him to complete the payment. Surprisingly under cross examination, Plaintiff contradicted himself. This is what happened under cross examination:

*Q: You mentioned that you personally delivered the vehicle to Kweku Adjei. Is that so?*

*A: Yes please.*

*Q: So your claim in paragraph 11 of your witness statement that Defendant forcefully took the vehicle from you cannot be correct?*

*A: I did not just go with the vehicle but I sent it due to some reasons.*

Plaintiff himself admitted under oath that he delivered the vehicle personally to Kweku Adjei after the Defendant and the said person had gone to his house in search of him but met his absence. From the evidence, the Plaintiff left the vehicle with Agyei who later sent it to Defendant. It is therefore not correct that the Defendant seized the vehicle after the expiration of the period since the evidence on record does not support this assertion. It is abundantly evident from the evidence before the Court that it is the Plaintiff who has breached the agreement between the parties and not the Defendant.

## CONCLUSION

Having considered the evidence adduced by the parties, I have found as a fact that Plaintiff has been unable to establish his claims against the Defendant. As such, Plaintiff's action fails in its entirety.

Nonetheless, it cannot be disputed that the vehicle is now in the possession of the Defendant and the Plaintiff has paid a substantial amount of the purchase price. In the opinion of the Court, the admission by Defendant that the Plaintiff as at the expiration of the six months had paid an amount of Gh¢32,750.00 makes the vehicle, the subject matter of the agreement a protected good which cannot be repossessed by the Defendant without first obtaining an order of the Court per Section 8 of NRCD 292. From the Act, it is clear that where goods have been sold under a hire purchase agreement where at least half of the total cost of the goods have been paid by the hirer, the owner of the goods sold cannot exercise a right, under the agreement, to repossess the goods. It has been established that Plaintiff himself personally returned the vehicle. Defendant has expressed that she will return the vehicle on condition that the Plaintiff pays the balance as well as interest from 10<sup>th</sup> February, 2021 to date of final payment.

The law is settled that a Court would generally not grant a party a relief he or she has not specifically asked for. However, where a relief not formally sought for is necessary and amply supported by the evidence, a Court is empowered to provide it. The Supreme Court in the case of **In Re Gomoa Ajumako Paramount Stool; Acquah v. Apana & Another (1998-1999) SCGLR 312** held that:

*"In appropriate circumstances, a court of law can grant a relief not sought for by a party. However, any such relief must, first, be supported by evidence on record, and secondly, not*

*be inconsistent with the stand and claim of the party in whose favour the relief is granted ...”*

Similarly in the case of **Kofi Manu v Akosua Agyeiwaa & 3 others (2013) JELR 68604**, the Supreme Court held as follows:

*This court would not ordinarily grant any relief which a party has not formally asked for. The only instance when a relief has been, so to speak, granted without being specifically asked for is in an instance when that relief emerges or is apparent from the evidence on record.*

See also: **Mrs. Isabella Odi Aggrey v. Daniel Fianko (2011) JELR 64266 (CA)** and **Daniel Owusu Danso v. Nii Oshiu Dade IV (2019) JELR 108208 (HC)**

This court is of the considered opinion that the Plaintiff having breached the agreement between the parties, the Defendant would be entitled to general damages for the breach. Again, it will be in the interest of justice to order the Plaintiff to pay the outstanding amount of GH¢7,250.00 together with interest thereon from 31<sup>st</sup> March 2021 at the prevailing commercial bank lending rate after which Defendant is required to give possession of the vehicle to Plaintiff. I will award general damages of GH¢2,000.00 in favour of Defendant against the Plaintiff for the breach of the agreement entered into by the parties.

Cost of GH¢2,000.00 is awarded for the Defendant against the Plaintiff.

**AMA ADOMAKO-KWAKYE (MS.)**  
**MAGISTRATE**

**Counsel**

Thomas Gblorvu, Esq. for Plaintiff.

Martin Owusu, Esq. for Defendant.