

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 23RD JANUARY, 2024.

SUIT NO. A2/251/22

STEPHEN DENTU

C/O MR. OFORI

ASOFAN, ACCRA

::

PLAINTIFF

VRS.

NDK FINANCIAL SERVICES LIMITED

NO. 1 28TH FEBRUARY ROAD

CHRISTIANBORG OSU, ACCRA

OPPOSITE ACCRA SPORTS STADIUM

::

DEFENDANT

JUDGMENT

INTRODUCTION

Per a Writ of Summons issued in this Court on 2nd June 2022, the Plaintiff herein made the following claims against the Defendant herein:

- a. Recovery of an amount of GH¢ 76,944.99 being the principal and interest on investment due as at May 26, 2021.

- b. Interest at the prevailing commercial bank rate on the GH¢ 76,944.99 from May 27,2021 till date of final payment.
- c. Cost including legal fees.

The Plaintiff in his Summary of Subject matter of claim averred that he invested an amount of GH¢ 73,993.36 with the Defendant for a 91-day duration from 24th February 2021 to 26th May 2021 with the investment to yield interest of GH¢ 2,951.63 upon maturity. He stated that the Defendant failed to pay the principal and interest upon maturity despite demands made on it and rather implored Plaintiff to give it a maximum of three months to settle the debt, which duration too has lapsed without Defendant honouring its obligation.

The Defendant was served with the Writ of Summons, Hearing Notices as well as Plaintiff's witness statement but the Defendant never appeared in Court although a lawyer appeared in Court twice to represent Defendant. Neither the Defendant nor its Counsel was present in Court for trial and since service of hearing notice had duly been effected, the trial proceeded pursuant to **Order 25 Rule 1(2)(a) of the District Court (Civil Procedure) Rules, 2009 (C.I. 59)**.

ISSUE

The main issue for determination by this Court is whether or not the Defendant is indebted to the Plaintiff in the sum of GH¢ GH¢ 76,944.99.

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 Plaintiff therefore has the responsibility of adducing evidence which is sufficient enough to avoid a ruling against him on the issue 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 testified on 2nd October 2023 by relying on his witness statement filed on 16th August 2022 which was adopted by the Court as his evidence-in-chief. His evidence was that he had a 91-day investment with the Defendant, with an amount of GH¢ 73,993.36 covering the period 24th February 2021 to 26th May 2021. He stated that the investment attracted interest of GH¢ 2,951.63 upon maturity of the investment.

According to the Plaintiff, the Defendant failed to pay him the principal amount invested as well as the accrued interest thereon upon maturity despite demands made for it. Subsequently, the Defendant wrote to him on 22nd September 2021 to entreat him to give it at most 3 months to settle its indebtedness to him, which he acceded to through his Lawyer, with an encouragement for Defendant to ensure it fulfils its promise but the Defendant could not go by its own words and had indeed to date not settled its indebtedness, hence the need to resort to this Court action.

The Plaintiff tendered in evidence the Investment Advice as Exhibit 'A'. This document from the Defendant Company bears ample evidence that indeed an amount of GH¢ 73,993.36 was invested by the Plaintiff with the Defendant and upon maturity on 26th May 2021, it was to accrue an amount of GH¢ 2,951.63 as interest. Exhibit 'B' also tendered by the Plaintiff

emanates from the Defendant and is a letter written to Plaintiff's lawyer in reference to a letter from the latter on Plaintiff's behalf, requesting the payment to him of his investment amount upon maturity. The Defendant in the said letter pleaded to be given a duration not exceeding three months for them to meet Plaintiff's demand. In response to this letter per Exhibit 'C', the request of Defendant was accepted and Defendant implored to fulfil its promise to avert any legal action.

The documentary evidence provided by the Plaintiff to back his oral testimony are proof enough of Plaintiff's claims and in the absence of any evidence to the contrary to discredit the evidence on record, the Court finds that the Plaintiff has been able to discharge the burden of proof on him and accordingly, he is entitled to the reliefs he seeks from this Court.

The Plaintiff prayed for interest as part of the reliefs he seeks from this Court. In **Senedza v Djokoto [1991] 2 GLR 8**, His Lordship Benin J. (as he then was) noted that the Defendant's breach of agreement to pay entitled the Plaintiff to recover interest. In the case of **Royal Dutch Airlines (KLM) v Farmex Ltd [1989-90] 2 GLR 623 at 644-645**, the Supreme Court held that interest was usually awarded to a party where the other party's default or breach of contract had deprived the first party of the opportunity to work with the money to earn profit or income. Also, in the case of **Metropolitan Insurance Co. Ltd. v Francis Nsiah-Afriyiee (2012) JELR 63964 (CA)** it was noted that the rationale for the award of interest is that the party awarded money as a judgment debt but which money had been kept by the other party for some time had lost the use of the money so kept and the award of interest was meant to compensate that party for the loss of the use of the money. See also: **McJohn Odei Cleve (Suing Per His Lawful Attorney Kofi Wadie) v. Raphael Abdallah Semekor (2019) JELR 65368 (HC)** and **Standard Chartered Bank (Ghana) v. Nelson (1999) JELR 66323 (SC)**.

From the evidence adduced, the Plaintiff's money was due to have been paid to him on 26th May 2021. To date, the Defendant has failed in its duty to pay the Plaintiff his money he

invested with the interest he earned thereon. This Court is mindful of the fact that the Plaintiff could have used the money for something profitable and gained from same. Also, the value of the amount owed will not be the same now compared to the value of the money at the time the amount was due to be paid. In this light, the Plaintiff would be entitled to be awarded interest on the money.

A prayer has also been made for cost. The policy rationale behind the institution of costs in litigation has been judicially articulated in **SCOA Motors v Koranteng [1967] GLR 263**, where Azu Crabbe JA (as he then was) said; *"The real object of awarding costs is to recoup a plaintiff who had successfully established his right to maintain the litigation which he had commenced or the defendant who had been wrongly dragged into court and harassed with litigation."* **Rule 1(1) of Order 7 of C.I. 59** provides that costs in a suit is at the discretion of the Court and the Court may after hearing the parties award costs it considers just.

The Court considers the peculiar circumstances of each case in arriving at the quantum of costs such as amount of expenses incurred by the party or his lawyer, amount of Court fees paid, length and complexity of proceedings, conduct of parties and/or their lawyers during proceedings, length of trial, number of witnesses. The Court must be fair to both parties in awarding cost. See: **Bank of Ghana v Nyarko (1973) 2 GLR 265**, **GATCO Chempharam v Pharmadex Gh. Ltd. (1999-2000) 2 GLR 262 @ 275**, **Neuseite Meditek and Konsult vs. United Bank for Africa (Gh) Ltd. [2021] DLCA 10755**. Relying on these authorities cited *supra*, and having regard to the circumstances of this case, I award costs of GH¢ 3,000.00 in favour of Plaintiff against Defendant.

CONCLUSION

Having considered the evidence adduced by the Plaintiff, the Court enters judgment for the Plaintiff against the Defendant as follows:

- a. **The Plaintiff is to recover from the Defendant the amount of GH¢76,944.99 being the principal and interest on investment due as at 26th May, 2021.**
- b. **The Plaintiff is entitled to recover interest on the amount in a. *supra* at the prevailing commercial bank rate from 27th May, 2021 to the date of final payment.**
- c. **Cost of GH¢ 3,000.00 is awarded for Plaintiff against Defendant.**

AMA ADOMAKO-KWAKYE (MS.)

MAGISTRATE

Counsel

Justice Kwaku Sallah, Esq. for Plaintiff.

Robert Pappoe, Esq. holding brief of Alfred Bannerman Williams Jnr., Esq. for Defendant.