

IN THE DISTRICT COURT HELD AT BAATSONAA ON WEDNESDAY, THE 10TH
DAY OF JANUARY, 2024 BEFORE HER WORSHIP MABEL N. L. AHELE,
DISTRICT COURT MAGISTRATE+

SUIT NO: A9/04/2024

PRINCESS DONALDSON - PLAINTIFF

VRS.

SAMUEL OCRAN - DEFENDANT

PARTIES: Plaintiff absent

Defendant present

Counsel for Plaintiff – Hamza Alhassan Esq. present

Counsel for Defendant – Jean Maurellet Esq. present

JUDGMENT

By Court: The Court noted that both the Defendant and Counsel for the Defendant were in Court today when the case was called for Judgment to be delivered. Counsel for Defendant after introducing himself stated that they have filed a Defence and Counterclaim and were waiting for a Defence to their Counterclaim from the Plaintiff. Hence, their absence in Court in the previous Court proceedings.

I have heard from Counsel for the Defendant on his position. I have given a careful consideration to the rules of C.I. 59, particularly Order 25 Rule 1(2)(a), and also the fact that per Order 3 Rule 1 and Order 18 Rule 1(1), Written Statements in this Court is not mandatory and hence, not binding on the Court. Therefore, a party who is desirous to opt for Written Statement or Pleadings must do so by leave of the Court.

It is my considered opinion that this Court can proceed with the delivery of the Judgment.

1. **Brief Facts**

The Plaintiff filed Writ of Summons on 23rd October, 2023 and prayed this honourable Court for:

- i. *An order for the Defendant to pay a cash sum of Five Thousand Ghana Cedis (GHC 5,000.00) being a refund of money to rent his shop.*
- ii. *Cost of preparing suit.*

It was Plaintiff's case that she saw Defendant's shop at Baatsonaa and took interest in it. Both Plaintiff and Defendant agreed on GHC1,200.00 for three (3) years. This amounted to a total of GHC 43,000.00. Plaintiff requested for provision of meter and washroom in the shop which Defendant agreed. Plaintiff paid by instalment, a total of GHC 40,200.00. Defendant after taking the money, refused to do the things in the shop as agreed. Plaintiff then decided not to rent the shop and requested her money back. After several attempts, Plaintiff collected a total of GHC38,000.00 with an outstanding amount of GHC5,000.00 which Defendant has refused to pay, hence this action.

2. The Defendant on the 20th November, 2023 filed Notice of Appointment of Lawyer, Defence and Counterclaim. However, both Defendant and Counsel for Defendant failed to appear before the Court on the first day the case was called. The case was adjourned and Plaintiff was ordered to serve on the Defendant a Hearing Notice for the next return date. On the return date, it was noted on the Court record that the Defendant was duly served with the Hearing Notice but neither he nor his Counsel showed up in Court to participate in the proceedings.

3. A party who fails to appear in Court after due service on him is taken to have deliberately failed to take advantage of the opportunity to be heard. The *audi alteram partem* rule cannot be said to have been breached in such situation. See *Republic v High Court, Cape Coast; Ex-parte: Marwan Kort [1998-99] SCGLR 833 and Ankumah v. City Investment Co. Ltd. [2007-2008] 1 SCGLR 1064.*
4. The Statement of Defence and Counterclaim filed by the Defendant on 20th November, 2023 was struck out for want of prosecution in accordance with Order 25 Rule 1(2)(a) of the District Court Rules, C.I. 59.
5. Since both the Defendant and his Counsel failed to appear after notice of the proceedings has been duly given to the Defendant, this Court, to avoid delay as provided by Order 25 Rule 6 and Order 1 Rule 1(2) of C.I. 59, proceeded with the trial proceedings. The Plaintiff was given the opportunity to prove her case on oath.
6. The issue for determination is whether or not Plaintiff is entitled to her claim?
7. Section 12(1) of the **Evidence Act, 1975 (NRCD 323)** states that *“except as otherwise provided by law, the burden of persuasion requires proof by preponderance of the probabilities”*
8. Plaintiff in her testimony on oath stated that, the Defendant was her landlord and after taking interest in the shop of Defendant, she requested for her own meter, a washroom entrance to be opened inside the shop and the Defendant agreed to have them done for Plaintiff. Plaintiff stated that she paid Defendant a total of GHC43,000.00 in instalment, however, Defendant changed his mind and did not do the things Plaintiff requested after she completed the payment.

She further testified that the Defendant gave out the shop to another person. She then asked her money back from the Defendant. In the evidence of

Plaintiff, the Defendant initially paid her GHC 20,000.00 in instalment of GHC5,000.00 and after several attempts, the Defendant gave her GHC 18,000.00 making a total of GHC38,000.00. Plaintiff stated that she demanded for the outstanding balance of GHC5,000.00 but Defendant claims he does not have it.

9. The claim for the liquidated sum stood unchallenged. And it is trite Law that failure by a party to cross-examine a witness on vital matters testified to in the witness box would be deemed to be an admission of those matters and a party needs not call further witnesses on that. See the following cases: *Foli v. Ayirebi* [1966] 1 GLR 627; *Billa v. Salifu* [1971] 2 GLR 87; *Bediako v. The State* [1963] 1GLR 48; *Lanquaye v. The Republic* [1976] 1 GLR 1 and *Takoradi Flour Mills v. Samir* [2005-2006] SCGLR 882.

10. I therefore find and hold that the Plaintiff has made out her claim to entitle a Judgment in her favour.

11. Judgment is hereby entered in favour of the Plaintiff on her reliefs as follows.

- i. *The Defendant is ordered to pay a cash sum of Five Thousand Ghana Cedis (GHC 5,000.00) being a refund of money.*
- ii. *Cost of 500.00 awarded in favour of Plaintiff against the Defendant.*

(SGD.)

H/W MABEL N. L. AHELE

(MAGISTRATE)

10/01/2024

