

**IN THE HIGH COURT OF JUSTICE, WESTERN REGION, HELD AT SEKONDI ON
THE 3RD DAY OF NOVEMBER, 2023, BEFORE HER LADYSHIP AFIA N. ADU-
AMANKWA (MRS.) J.**

SUIT NO. E2/23/21

1. ANTHONY ESSIEN **1ST PLAINTIFF**

2. JOSEPH MOSES **2ND PLAINTIFF**

VRS.

UNION OIL GHANA LTD **DEFENDANT**

1. OMENZA COMPANY LTD **1ST CLAIMANT**

2. REPUBLIC BANK (GH) PLC **2ND CLAIMANT**

3. JONATHAN BOAKYE YIADOM **3RD CLAIMANT**

JUDGMENT

On 15th February 2021, the plaintiffs issued a writ against the defendant for the recovery of GH¢342,494.41, being the cost of services they rendered to the defendant by transporting her fuel products to her fuel stations in the Western and Western North regions. Final judgment in default of appearance was entered for the plaintiffs for the reliefs endorsed on the writ of summons. Pursuant to the execution of the judgment of the court, the plaintiffs caused to be seized and attached, four DAF vehicles, and a Toyota Hiace vehicle which they claimed belonged to the defendant. They also caused to be seized and attached two of the defendant's filling stations situate at Darkuman and McCarthy Hill. The 1st and 3rd claimants filed notices of claim regarding the four DAF vehicles and Toyota Hiace vehicle, respectively claiming interest in the vehicles. The 2nd

claimant also filed a notice of claim in respect of the defendant's building No. B235/25 situate at 13 Ahorlu Close, Darkuman, Accra. The plaintiffs filed a notice disputing these claims, for which the court ordered the issues between the plaintiffs and the claimants to be tried. In the course of proceedings, the plaintiffs admitted the 1st claimant's claim regarding the four DAF vehicles for which they were released to the 1st claimant. During the proceedings, it also came to light that the sheriff had not attached the Toyota Hiace vehicle. The plaintiffs, having declared their disinterest in pursuing their claim regarding the Toyota vehicle, it was released to the 3rd claimant.

This interpleader action concerns the claim of the 2nd claimant regarding the building situate at Darkuman. In this action, the claimant contends that the defendant has no interest in the attached property, as it has a prior mortgage charge over the property, which has not yet been discharged.

During the course of the proceedings, the 1st plaintiff died. Having filed his witness statement, the 2nd plaintiff failed to testify despite hearing notices served on him to do so. This case is, therefore, one-sided, consisting only of the evidence of the claimant and its witness.

The 2nd claimant testified through its witness, Eric Asuako Appiah, a relationship officer in the corporate department of the claimant bank. He testified that the defendant had been a customer of the bank since 2009. The defendant and her managing director, the late Charles Obeng-Mensah, presented to the bank, land certificate in respect of the disputed building numbered B235/25 situate at 13 Ahorlu Close, Darkuman. The late Charles Obeng Mensah was the registered proprietor of the property. The defendant, acting by its then managing director, the late Charles Obeng-Mensah, executed a mortgage deed dated 14th January 2010 in respect of the property, which was used to secure a loan facility granted by the bank. On 9th August 2010, the bank registered its

mortgage interest in the mortgage deed in the sum of GH¢1,400,000.00. Over the years, the defendant, through its managing director and other officers of the company, had obtained various facilities from the bank, which had always been secured by the property attached by the plaintiff. In November 2017, the bank advanced an overdraft facility of GH¢8,000,000.00 for twelve months and a term loan of GH¢5,300,000 to the defendant for sixty months. The bank registered its interest at the Collateral registry on 11th June 2020. As of October 2021, the defendant's total indebtedness to the bank stood at GH¢27,310,616.28. The bank had not recovered any amount for the property attached as the bank had not yet disposed of the property.

Mr. Wilson D. K. Badzi, a legal assistant of the claimant bank, testified and corroborated the evidence of PW1. He contended that the claimant bank had a prior registered mortgage charge in the property, which had not yet been discharged. Therefore, the plaintiff could not sell the property in satisfaction of the judgment sum due it from the company.

The claimant bank sought to prove the loan facility it granted to the defendant by tendering the credit letter of agreement and addendum to the credit letter of agreement in evidence as exhibits "E" and "F", respectively. These documents were admitted in evidence without any objection, given that the 2nd plaintiff was absent from court. Ordinarily, the court should consider these documents as long as they are in evidence. Unfortunately, both exhibits are unstamped and, therefore, inadmissible per se. Evidence is inadmissible per se when a statute or law makes it inadmissible, and its inadmissibility is not founded upon a fact that the matter to be proved by that evidence had not been pleaded. See **In Re Okine (Decd); Dodoo & Another vs. Okine & Others [2003-2004] SCGLR 582**. Evidence inadmissible per se includes unstamped documents and

unregistered documents. The law makes them inadmissible even if the opposing party does not object. Section 32(6) of the Stamp Duty Act, 2005 (Act 689) states:

“Except as expressly provided in this section, an instrument

(a) executed in Ghana, or

(b) executed outside Ghana but relating to property situate or to any matter or thing done or to be done in Ghana, shall except in criminal proceedings, not be given in evidence or be available for any purpose unless it is stamped in accordance with the law in force at the time when it was first executed.

This Act requires documents, such as the credit agreement, to be stamped before they can be admitted in evidence. The need for such documents to be stamped is further buttressed by the provisions of section 22(6) of the Borrowers and Lenders Act, 2020, Act 1052, which stipulates that:

“A lender shall not enforce a security interest registered under this Act unless the credit agreement is stamped in accordance with the Stamp Duty Act, 2005 (Act 689)”.

As unstamped documents, exhibits “E” and “F” are inadmissible per se. As held in **Lizori Ltd vrs. Mrs. Evelyn Boye, School of Domestic Science & Catering [2013-2014] 2 SCGLR 889:**

“Either the document has been stamped and appropriate duty paid in accordance with the law in force at the time it was executed or it should not be admitted in evidence. There is no discretion to admit it in the first place and ask the party to pay the duty and penalty after judgment. Thus the trial court would have been perfectly justified to reject the receipts without stamping”.

Being inadmissible per se, the documents should not have been admitted in evidence in the first place. Therefore, they would not be considered as part of the evidence led on record. After all, where such evidence is received in the course of the trial (with or without objection), it is the duty of the court to reject such evidence when giving judgment, if not, the appellate court would reject it. This rule is founded on the fundamental principle that a court must arrive at its decision by relying on legal and admissible evidence and nothing less. See **Tormekpe vrs. Ahiable [1975] 2 GLR 432.**

Further to that, it is the 2nd claimant's case that the defendant, through its managing director, executed a mortgage deed to secure the loan facility granted by the bank. The mortgage deed was tendered in evidence as exhibit "C". The loan facility granted to the defendant was to the tune of GH¢1,400,000.00, and its payment was secured by property described in the schedule as:

"All that piece or parcel of land in extent 0.07 hectare (0.18 of an acre) more or less being Parcel No. 401 Block 5 Section 063 situate at Odorkor in the Greater Accra Region of the Republic of Ghana aforesaid as delineated on Registry Map No. 004/063/1991 in the Land Title Registry, Victoriaborg, Accra and being the piece or parcel of land shown and edged with pink color on Plan No. 216/2008 annexed to Land Certificate No. GA, 28480 Volume 32 Folio 602 date 14th January 2009".

It would appear that the subject matter of exhibit "C" differs from the disputed property, which the 2nd claimant described in her notice of claim as situate at Darkuman. The notice of claim filed by the 2nd claimant on 6th April 2022 gave the particulars of the disputed property as:

"PARTICULARS OF CLAIM

Defendant/ Judgement Debtor's Building situate at Darkuman, Accra measuring to an extent of 0.11 hectare (0.26 of an acre) more or less being Parcel No. 369 Block 5 Section

063 situate at North Odorkor in the Greater Accra Region of the Republic of Ghana aforesaid as delineated on Registry Map No. 004/063/1991 in the Land Title Registry, Victoriaborg, Accra and being the piece or parcel of land shown and edged with pink colour on Plan No. 125/2012 annexed to Land Certificate No. GA. 39551, Volume 32, Folio 668 and dated 13th March, 2015 mortgaged to the Claimant by the judgment Debtor”.

The particulars in the notice of claim resulting in the interpleader action clearly show that the disputed property is different from the property, the subject matter of exhibit “C”. For one, the location and size of the properties differ. The disputed property, the subject matter of the interpleader action, is located at Darkuman and measures 0.26 of an acre, whilst the property, the subject matter of exhibit “C”, is located at Odorkor and measures 0.18 of an acre. The disputed property is also described as Parcel No. 369 Block 5 Section 063 situate at North Odorkor, whilst the property in exhibit “C” is described as Parcel No. 401 Block 5 Section 063, situate at Odorkor. The 2nd claimant contended that it had registered its interest in the mortgaged property at the collateral registry and tendered the registration as exhibit “G”. Exhibit “G” further buttresses the fact that the bank had no mortgage charge over the disputed property.

As it stands now, even if there is proof of a credit agreement between the 2nd claimant and the defendant, there is no proof that the disputed property was used to secure payment of the loan facility. The property for which the late Charles Obeng-Mensah executed a mortgage deed, i.e. exhibit “C”, is not the disputed property. I am not convinced by the 2nd claimant’s assertions that it has a registered mortgage charge in the disputed property, which has not yet been discharged. There is no such mortgage charge, so its claim should fail. In the circumstances, her claim is dismissed.

(SGD.)

H/L AFIA N. ADU-AMANKWA(MRS.)

JUSTICE OF THE HIGH COURT.

COUNSEL

Sophia Duncan-Amoah (holding Emefa Amoah-Addo's brief) for the 2nd Claimant.