

**IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT OF JUSTICE, HUMAN RIGHTS DIVISION, COURT 2, ACCRA, HELD ON THURSDAY THE 2<sup>ND</sup> DAY OF NOVEMBER, 2023, BEFORE HIS LORDSHIP JUSTICE NICHOLAS M. C. ABODAKPI (J)**

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**CASE CALLED AT 9:14 A.M.**

**SUIT NO. AHR/8/2015**

**JORDAN QUARSHIE**

**VS**

**RADIANCE PETROLEUM**

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**PARTIES: PLAINTIFF – PRESENT**

**DEFENDANT – ABSENT**

**COUNSEL:**

- 1. NANA ADWOA BAIDEN HOLDING BRIEF FOR FRANK YANKEY FOR THE PLAINTIFF – PRESENT**
- 2. ERNEST ASSIE HOLDING BRIEF FOR RUBY AKUA AGLAGOH FOR THE DEFENDANT – PRESENT**

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### **JUDGMENT**

01. a) The writ of summons taken from the Registry of this Court has the following reliefs:
  - a. A declaration that Plaintiff's dismissal was wrongful.
  - b. Exemplary damages for wrongful dismissal.
  - c. Cost

- b) The facts in support of these claims are that in March, 2014, Plaintiff was employed by Defendant as Station Manager of its filling station, initially in Accra and transferred to Yawkwei near Konongo – Ashanti Region.

Plaintiff averred that his woes started on 21/08/2014, when a fuel tanker came to discharge diesel which he suspected was adulterated and therefore not fit for use.

He alleged he had called his superior and informed him about his suspicion, but was asked to allow the tanker to discharge the diesel.

Furthermore, he stated he refused to sell the diesel in question to his loyal customers but others who bought it came back with complaints which eventually got to the notice of National Petroleum Authority [N.P.A.], who paid a surprise visit to the station.

In addition, Plaintiff alleged, N.P.A. conducted tests and found the diesel product to be “SUSPECT” meaning it was adulterated.

It is Plaintiff’s case that Defendant Company visited the station and in a purported inspection of his books alleged he had incurred GH¢10,000.00 shortage, and proceeded on that basis to verbally dismiss him. Then on reporting to Head Office, Accra, he was ordered to pay the GH¢10,000.00 or be reported to Police for stealing.

The Plaintiff’s version of the facts ended with the averment that, Defendant assigned three (3) reasons verbally for his dismissal, the principal one (1) being that, he has been telling people that, Defendant has been selling adulterated diesel.

The Plaintiff denied the accusation as could be gleaned from his REPLY, he also denied the averments in the Defence and counter-claim made against him.

02. The Statement of Defence and counter-claim showed that, Plaintiff had quit this post without notice following an inspection of his station by Defendant.

In paragraph 3 of the Defence, the Defendant denied paragraphs 6 to 11 of the statement of claim, which are the allegations about the discharge of adulterated diesel and how he handled the situation.

In continuation, in paragraph 4, the Defence denied the version of events and stated as follows:

*“Paragraph 4: in further denial of paragraphs 6 to 11, Defendant avers that no adulterated diesel was discharged at the Yawkwei Filing Station on the 21<sup>st</sup> of August, 2014, and the allegation is just a figment of the Plaintiff’s imagination.”*

**In paragraph 5, the Defence stated further as follows:**

*“In further denial, Defendant would say that the diesel [the product] that the Plaintiff claimed was “mixed”, was indeed delivered with invoice number 000804. That in accordance with laid down procedures, the Plaintiff acknowledged receipt of the product by writing his full name, signing and stamping the delivery invoice to confirm that he [the Plaintiff], received the product in good condition.”*

Furthermore, in paragraphs 6, 7 and 8, the Defence stated the procedure that N.P.A. follows in enforcing its regulatory duties and averred that N.P.A. would have closed the Yawkwei Station after its surprise visit if it had found that the diesel was adulterated and it did not even write a letter to Defendant about any wrong doing.

In paragraph 9, 10, 11, 12 and 13, are allegations about unacceptable industry practices found by Defendant upon inspection it conducted at Plaintiff's Station, and electronic and manual checks confirmed that products were discharged through the meter as 'SOLD', but remained unaccounted for to the tune of GH¢10,000.00.

Secondly, it was alleged Plaintiff had failed to keep a loss control Book, which is vital to the monitoring of underground fuel stocks on a daily basis, and as a consequence was unable to forward Daily Variance Reports to his supervisors at the Head Office as required.

Finally, the Defence alleged Plaintiff was requested to relocate to Accra in line with company policy, and was never dismissed and was given the chance to explain the short falls found with his management of the station.

The Defence has endorsed its own claims, as found in the counter-claim.

#### COUNTER-CLAIM:

1. The Defendant repeats all the averments contained in paragraphs 1 – 17 of the statement of Defence and counter-claim as follows:
  - i. Full payment of an amount of Ten Thousand Ghana Cedis [GH¢10,000.00], being the short fall revealed on account of products sold and not accounted for by the Plaintiff during his tenure as Station Manager for the Yaw Kwei Filing Station.

- ii. An order that Plaintiff returns all Defendants properties in his custody including the full payment of the amount of Eight Hundred and Eighty Ghana Cedis [GH¢880.00], being rent advance to Plaintiff on the 25<sup>th</sup> of July, 2014, less deductions from his salary covering same in the amount of Eighty Ghana Cedis [GH¢80.00]
- iii. Cost
- iv. Such further Order(s).

### 03. **THE TRIABLE ISSUES**

- i. Whether or not there was a short fall of Ten Thousand Ghana Cedis [GH¢10,000.00], on account of products sold by Plaintiff during his tenure as Station Manager for Defendant's Yawkwei Filing Station which remains outstanding and unpaid by the Plaintiff.
- ii. Whether or not the Plaintiff continues to hold Defendant Company's properties which he should have handed over upon quitting his post
- iii. Whether or not the Plaintiff owes the Defendant the amount of Eight Hundred and Eighty Ghana Cedis [GH¢880.00], as balance outstanding on Nine Hundred and Sixty Ghana Cedis [GH¢960.00], being rent advanced to Plaintiff on the 25<sup>th</sup> of July, 2014, less deductions from his salary covering same in the amount of Eighty Ghana Cedis [GH¢80.00]
- iv. Whether or not the Plaintiff is entitled to his claim.

The application for Direction containing these triable issues was filed by the Defence and served on Plaintiff who filed no Additional Issues.

### 04. These basic facts are not in dispute.

- i. That Plaintiff had worked for Defendant from March, 2014, to October, 2014, a period of Eight (8) months approximately but had not been given a formal appointment letter

- ii. Similarly no formal letter of termination of employment has been issued and served on Plaintiff by Defendant
- iii. The National Petroleum authority [N.P.A.], indisputably, is the petroleum industry regulator and has been given statutory duties to perform.

**05. ALLOCATION OF BURDEN OF PROOF**

The Relief endorsed by Plaintiff namely a declaration that he has been dismissed wrongfully and must be awarded damages, to my mind has found expression in the issue, whether or not Plaintiff is entitled to his claim [i.e. issue iv], but this is in general form only.

Whether Plaintiff is keeping Defendant's property and has to refund monies [issues ii and iii], are consequential matters, which are dependent on the issue of whether his dismissal/termination was wrongful or not.

Thus, the material issue in controversy in this trial is whether or not there was a shortfall of Ten Thousand Ghana Cedis [GH¢10,000.00], on account of products sold by the Plaintiff during his tenure as Station Manager for Defendant's Yawkwei Filling Station which remains outstanding and unpaid by the Plaintiff.

The above is ISSUE 1 or the first issue set down for this trial.

The other material question as reflected in the pleadings is whether or not adulterated fuel had been delivered to Defendant's Station of Yawkwei, with its tacit approval.

This Court will allocate to the Defendant the burden of proof on ISSUE '1'.

It is Defendant who had made these positive averments, it is therefore obligated to introduce sufficient evidence to support the pieces of primary facts that are crucial to its success in establishing the facts in issue.

The Plaintiff has denied the issue in controversy and has stated a different version of how GH¢10,000.00 loss or shortfall had occurred.

The establishment of his averments on the shortfall, will contradict and defeat the averments made by the defence on the matter.

It behoves on Plaintiff to adduce the evidence which will constitute the converse of the averments made against him on the loss or shortfall of GH¢10,000.00.

In the evaluation of assertions made for and against the shortfall or loss of GH¢10,000.00, the burden of producing evidence and the burden of persuasion will shift as appropriate, and in line with the principles of our law of evidence as stated in Sections 10, 11 (1) and 4, 12 and 14 of the Evidence Act, 1975 [NRCD 323].

It is the party whose evidence on the preponderance of the probabilities, establishes the truth of what has been asserted, that will be adjudged as having discharged the burden of proof.

The Plaintiff is also obligated to establish that adulterated fuel had been accepted by Defendant Company and link that with the dispute which he alleged resulted in his dismissal.

The Defendant who has denied these averments is expected to introduce some evidence on the issue, so as to discredit the averments and assertions offered as the basis and proof of the claim made by Plaintiff.

It is trite to state that even though an employer is not under an obligation to produce evidence in justification of its decision to terminate employment relation with an employee, at the trial of the dispute evidence showing the grounds and the manner in which the dispute was handled may impact positively or adversely on the decision made, depending on the conduct in question and the details of the employment relationship.

06. This Court will proceed with the consideration of testimony proffered on ISSUES 1 of the triable issues.

The evidence of Plaintiff is to the effect that in March 2014, he was employed by Defendant, posted to Anyaa Filing Station and in July same year transferred to Yawkwei I Ashanti Region. He asserted Defendant had found that he was the person who could manage that station satisfactorily given his performance at Anyaa filing station.

In continuation, he stated on 6/10/2014, the zonal Co-ordinator of Defendant Company visited his station to check his accounts and as a result he went to the Head officer, Accra. And a team from the head office came with him to Yawkwei on 23/10/2014 and accused him of having incurred shortage of GH¢10,000.00. Plaintiff stated he was also accused of having stolen the said sum of money. What followed these accusation has been stated in paragraphs 14 and 15 of his Witness Statement. He stated as follows:



*“14. I was summarily dismissed by the leader of the team who was Mr. Daniel Tetteh after talking to the Managing Director on phone.”*

Paragraph 15 reads:

*“I had been stopped from working with effect from 7<sup>th</sup> October 2015.”*

His case is that he had been dismissed on 23/10/2014, for allegedly stealing GH¢10,000.00, telling people that the company sells adulterated diesel and for looking for a new job and not keeping the Yawkwei station tidy.

Plaintiff asserted that back in Accra, the Managing Director personally asked him to give a schedule of payment of the GH¢10,000.00 or be prosecuted and thereafter he was ordered out of the office and warned not to come back until the GH¢10,000.00 is paid.

On these accusations of stealing or short fall, Plaintiff denied any wrong doing as could be seen in paragraphs 20 to 27 of his Witness Statement. These paragraphs are to the effect that, he [Plaintiff] was an efficient manager, who had not experienced any shortage before at the Yawkwei Filing Station. I cited Exhibit ‘A’ and asserted that from 22/07/2014 to 7/10/201, the statement of Accounts of monies he had lodged at the Bank was GH¢931,359.90. He stated Exhibit ‘A’ has been duly certified by the Finance Manager of Defendant.

On examination this Court has found that Exhibit ‘B’ and not Exhibit ‘A’ is the relevant document, it is a document headed Radiance Petroleum Ltd, customer statement of Account for 15/10/2014. It has an opening balance of GH¢318,716.40, Total Debit of GH¢1,088,373.00, Total Credit of

GH¢981,401.99 and a closing balance of GH¢425,687.41. It has been signed by Plaintiff and counter-signed by one Joseph Addae, the Finance Manager.

Furthermore in paragraph 23, the Plaintiff attempted an illustration of transactions over the period and proffered Exhibit 'C' [not Exhibit 'B'] in support of the fact that he did not incur shortage of GH¢10,041.91. In details from 'a' to 'j', he stated as follows:

- a) Amount to be banked for the period was GH¢931,333.17
- b) Amount actually banked was GH¢931,59.90
- c) Dip Sales [representing the total value of fuel underground for the period] was GH¢950,551.20
- d) This amount is less BRV (Bulk Road Vehicle) shortages. This refers to the shortages experienced by the tankers that convey the fuel and this is GH¢2,869.50 for the period.
- e) The Dip Sales Vale is further lessened by the approved expenses that is GH¢6,316.59.
- f) So the total expenditure is (d) + (e) = GH¢9,186.39. Then  $\text{GH¢}950,551.20 - \text{GH¢}9,186.39 = \text{GH¢}941,34.81$
- g) Deducting the actual money banked GH¢931,359.90 from GH¢941,564.81, gives negative balance of GH¢10,041.91.
- h) This negative balance of GH¢10,041.91 represent a Dip sale shortage in monetary terms not shortage in physical cash.
- i) This GH¢10.041.91 represent a monetary value of the underground loss for the period which is normal in the industry.
- j) I cannot therefore be held accountable for that loss of GH¢10,041.91.

Finally, he tendered Exhibit D, E, F, G, and H in illustration of the amount of fuel that the station received over the period, running the station.

There is also Exhibit J series which has been described as the LOSS CONTROL BOOK, to buttress the denial that he had stolen GH¢10,041.91 or had incurred such a loss. By not managing the station efficiently as it were.

The case of Plaintiff is further reflected in answers he gave to questions when under cross-examination by Counsel for the Defendant. In the questions posed by Defence Counsel, are hints about what their defence or explanations are about the assertions made by Plaintiff on this loss of GH¢10,000.00 as in ISSUE '1' under consideration.

Firstly, when asked about his employment and the fact that he is required to follow specific management procedures in the performance of his duties and who his supervisors are, Plaintiff stated he was an employee of Defendant, subject to direction by management and that Daniel Kojo Tetteh, the Retail and Business Development Manager was his immediate supervisor.

Secondly, he denied the suggestion that when variance analysis was done at the Yawkwei Station, shortage was detected on or about 7/10/2014.

Thirdly, it was suggested to him that he failed to keep a Loss Control Book even though that document is what will help management to monitor the underground stock daily and by that failed to follow company's condition of managing the station.

Plaintiff denied the suggestion and asserted he kept a Loss Control Book, and forwarded daily Variance Reports to Head office as required of him. He denied showing disrespect and neglected to follow directions given to him.

This question and answer below is relevant to the overall management of the station and the issue under consideration:

Q: I suggest to you that you failed to comply with the Company's conditions of managing a station and especially the submission of monthly returns leading to losses and was unable to forward same because you knew the product had not evaporated.

A: I did not fail to comply with the Company's regulations. I also forwarded monthly returns analysis to the Company for all the period that I was there.

At this point, it noted that Plaintiff had tendered what he had described as the LOSS CONTROL BOOK, as well as monthly Returns. If it is the case that those Exhibits are not what they represent, it is the Defendant who must establish that, and show that those records have not been kept at all as alleged.

The Plaintiff has denied ever saying that products have evaporated but he has been confronted with this; and it was said he had said so to cover-up for his mismanagement of Defendant's business. It is the Defendant who must introduce further evidence on this matter, because, Plaintiff has denied ever saying so.

The establishment of these primary facts are crucial to the Defence of the Defendant company who has stated that Plaintiff has incurred the loss of GH¢10,000.00 or stolen same.

If proved such a loss arising out of Plaintiff management of the Yawkwei station, will amount to an inefficient management of the business of his employer. As stated already, the burden of proof on issue '1' is on the Defendant.

There is further interrogation of the issue of loss of GH¢10,000.00 on 18/03/2021, when Plaintiff was cross-examined.

It was said the Zonal Co-ordinator of Defendant company went to examine Plaintiff's books and found that there was shortage of GH¢10,000.00 and that the shortage was in the form of cash of GH¢10,000.00.

Besides the above, further questions posed by Counsel for the Defendant were to the effect that reconciliation was done and the loss of GH¢10,000.00 is a result of losses attributable to products lost or unaccounted for and loss of physical cash.

The record showed that, Plaintiff did not admit any of these suggestions his answers were to the effect that when the Zonal Coordinator came to do his examinations, the loss found was due to operational losses and that was what he detected. He stated also that, there is no evidence in his possession or which Defendant has showed that the GH¢10,000.00 shortfall was in the form of cash unaccounted for by him. He referred to Exhibit D, D1, D2, which he said are the Monthly Returns for JULY, AUGUST and SEPTEMBER, which confirm his case that he did not incur physical loss of cash to the tune of GH¢10,000.00.

The above constitute documentary evidence being proffered to corroborate the oral testimony to the effect that no cash losses of GH¢10,000.00 were discovered by the Defendants officers which has been found to be the result of his conduct of not managing the station properly.

On the checks done on the underground stocks by an investigative team that visited his station, this was the response of Plaintiff.

*“There was only one finding and the finding was that, there was an underground operational losses which had SUPER 615 litres and diesel 1778 litres and re not cash losses.”*

Therefore, when it was put to him thereafter that there was both cash and product losses, he disagreed with the assertion.

In my thinking, the burden of producing evidence on the quantum of loss both in cash and product, has shifted from Plaintiff to Defendant on how the loss occurred.

It is Defendant Company that has custody of company records and documents on checks, examination and reconciliation that were carried out and it is expected these pieces of evidence will be introduced to establish the fact in issue.

Accordingly, this Court will examine the evidence-in-chief of Defendant and other pieces of evidence adduced to determine whether the requisite degree of truth concerning the nature of loss that occurred is what Defendant has alleged.

Joseph Addae, the Finance Manager of Defendant testified on its behalf. His evidence on issue '1' is that an independent investigation into alleged losses began on 16/10/2014 and Plaintiff's books covering the period 22/07/2014 to 6/10/2014, were examined.

He also stated on 23/10/2014, reconciliation of stocks was done following a visit to the station at Yawkwei.

On the methods used, he stated invoices were examined and matched with deliveries received by Plaintiff at the station and all payments remitted by Plaintiff were matched with actual credited to his fuel account at the Head office.

He gave their findings as follows:

- a) Physical losses: - variance analysis of total volume of fuel products received by Plaintiff, volume sold and stock expected in the stations underground tanks revealed a physical loss of two thousand three hundred and ninety-three (2,393) litres for the period 22/07/201 to 6/10/2014.

<b>PRODUCT</b>	<b>VOLUME LOSS (LITRES)</b>	<b>VALUE/ COST OF PRODUCT</b>
SUPER	615	2,067.32
DIESEL	1,778	5,813.99
TOTAL	2,393	7,881.34

- b) He stated they found Bulk Road Vehicle (BRV) or tanker driver shortages of eight hundred and sixty litres (860) consisting of six hundred and forty (60) litres of super and two hundred and twenty (220) litres of Diesel. And that these were valued and credited to Plaintiff's fuel account.

This Court wishes to observe that the absolute value or the amounts involved were not given. Therefore to say that these were credited to Plaintiff's fuel account, falls short of what will constitute a transparent and accurate audit of the stocks.

- c) Sales accounting is the other heading of activity engaged in as part of investigation of Plaintiff by the Defendant.

The Defendant asserted it collated and verified delivery invoices and bank payments using two (2) industry methods namely, Metre sales and DIP SALES methods. The outcome has been stated as follows:

<b>ACTIVITY</b>	<b>METRE SALES (GH¢)</b>	<b>DIP SALES (GH¢)</b>

Sales for the period	937,649.66	950,551.20
Less BRV shortages	(0.00)	(2,869.80)
<b>CREDITABLES</b>		
Less station operational expenses	(6,316.07)	(6,316.59)
Amount to be banked	931,333.07	914,364.81
Amount banked	931,359.90	(931,359.90)
Difference (Sale shortfall)	(26,83)	10,004.91

d) ACCOUNT RECONCILIATION

The defence stated, as at 7/10/2014, fuel account had GH¢302.074.07 and this was reconciled with the physical stock in the station underground tanks, as at the close of 6/10/201 showing the following results:

	<b>ACTIVITY</b>	<b>REMARKS</b>	<b>GH¢</b>
a)	Balance on Account as at 7/10/2014	-	392074.07
b)	LESS Value of stock as at 7/10/2014	41,370 litres @ GH¢3.36 per litre	(139,003.00)
c)	LESS – Value of Diesel stock as at 7/10/2014	44,000 litres @ GH¢3.27 per litre	(143,880.00)
	LESS – Station Expenses	From 22/07/2014 to 6/10/2014	(6,316.59)
	LESS – BRV Shortages creditable	640 litres SUPER @ GH¢3.36 per litre	(2,150.40)
	LESS – BRV shortages	220 litres of Diesel @ GH¢3.27 per litre	(719.40)
	<b>BALANCE OUTSTANDING ACCOUNT</b>	<b>ACCOUNT SHORTFALL</b>	<b>10,004.48</b>



- e) It was asserted Plaintiff was unable to account for 11,000 litres of super he received on 2/10/2014, after delivery invoices that accompanied products dispatched to Yawkwei station within the period.

The Defendant tendered Exhibit '1' covering the period 22/07/201 to 6/10/2014, comprising accounts on SUPER and Diesel Exhibit '2' series are invoices and Exhibit '3' is monthly Returns analysis for JULY, AUGUST, 2014 to 6/10/2014.

Exhibit '4' is the document for Managing Radiance Fuel stations addressed to Plaintiff dated 20/04/2014. And Exhibit '5' series which are warning letter on cash shortages dated 14/04/201, do not relate to Yawkwei filing station but ANYAA station in Accra. The response of Plaintiff and another officer have been accepted in evidence.

The relevance of Exhibit '5' may be, is in helping establish the competence or otherwise of Plaintiff in the management of his employer's business. However, the document does not relate to Plaintiff only. The weight to attach to it will be seen in the evaluation of the aggregate of evidence adduced on the triable issue/s.

The salient parts of examination of Defendants Witness on ISSUE '1' are reviewed below:

- 1) He had agreed that operational loss is distinguishable from misappropriation and that like (BRV) Bulk Road Vehicle losses, when investigated and confirmed they are taken as part of operational loss and not attributable to the act of the station manager in question.
- 2) When tested on the two (2) methods adopted in their investigation, namely Metre reading and DIP reading, he and agreed that, metre reading refer to

cash sales whilst DIP does not but the DIP is done in to reconcile the metre reading and cash with the product, as in closing balance of stock available at a particular time.

- 3) In respect of money Plaintiff is expected to have put in the Bank, Plaintiff put it to the Defendant that their finding as in the table it made showed that, Plaintiff had paid more money into the Bank than expected of him. This the Defendant accepted as true. The figures in point are GH¢931,359.90 expected but Plaintiff had put in the Bank GH¢941,364.81.
- 4) The shortfall of GH¢10,000.00 Plaintiff through Counsel in his questions to Defendant contended was an operational loss and not misappropriation, and therefore Plaintiff cannot be held accountable, Defendant disagreed.
- 5) The Plaintiff also contended that when he left the station as a result of the dispute that arose, closing dipping used in the reconciliation done are unknown to him, and to this Defendant's position that he had confirmed it except that his Counsel forgot to include that information and supporting documents in the Witness Statement, as an afterthought. But he responded by saying that, that was not what he sought to do. He also added that the GH¢10,004.48, represents product in Plaintiff's custody which he failed to account for.
- 6) On Loss Control Book, it was put to him (Defendant) that it exists, and Exhibit 'J' is the record, but because the Defendant did a shoddy investigation they were unable to look at the document which was available at the station at Yawkwei, and erroneously concluded that he kept no Loss Control Book.

The Defendant admitted Exhibit 'J' is indeed the relevant Loss Control Book.

- 7) On failure to submit Monthly Returns Report, Plaintiff's case is that, he had performed that duty as required of him and Exhibit 'D, D1 and D2' are the records and therefore it was erroneous to state that he had failed to do so.

Indeed, the question and answer on this pieces of fact is as reproduced below:

Q: Then take a look at Exhibits 'D, D1, and D2' attached to Plaintiff's Witness Statement. Are these the monthly returns you are talking about?

A: Yes my Lord.

Earlier on Defendant had agreed that, Plaintiff spent three (3) months only at the Yawkwei station. And by the answer given as above he has confirmed Plaintiff claim that he had indeed submitted three (3) monthly returns as required of him.

It is apparent these are admission of material facts that Defendant had presented to show that Plaintiff did not perform his duties efficient as she tried to cover up for shortfall and losses, but these averments as in the pleadings/defence and evidence-in-chief, have been rebutted effectively by Plaintiff.

- 8) The Defence was confronted with the contention that he GH¢10,000.00 was operational loss but Plaintiff a hardworking officer was wrongfully accused of misappropriation and threatened with prosecution, thereby

constructively dismissing him by saying, if he did not make a refund, he should not come to work.

07. The next consideration of this Court is whether or not adulterated fuel had been discharged at Yawkwei station with the tacit approval of the Defendant.

In paragraphs 7 and 8 of his Witness Statement Plaintiff alleged that on 21/08/2014, a tanker came to discharge only diesel at the station but in the course of the discharge he stopped the delivery because he had detected that the diesel did not have the right smell and colour. Therefore he called Daniel Tetteh the retail Manager for direction on what to do but was told to permit the product to be discharged and he complied.

Plaintiff alleged there were complaints from motorists, but he had avoided selling to regular customers.

Furthermore, he stated four (4) days thereafter a team of N.P.A. officer came to conduct a surprise check and concluded that the product was “SUSPECT”.

He cited Exhibit ‘G’ and Report of the test done. Exhibit ‘H’ and not Exhibit ‘G’ is the relevant document it on firms the assertion of Plaintiff that the product was marked as “SUSPECT” as in the comments section on the Exhibit.

In a supplementary witness statement Plaintiff alleged on 23/05/2015, a similar incident happened where motorist who brought product from Defendant’s station in Accra Nyanyano complained about malfunction of their engine due to adulteration of the fuel they bought.

These assertions were denied. Firstly on the Yawkwei incident the Defence stated, the marking of the sample product as being “SUSPECT” did not mean it had been adulterated.

Secondly, N.P.A. had not written to Defendant to offer an explanation let alone getting the station closed down for engaging in an activity outlawed in the industry.

It is the Defendant’s case that there is a procedure and standard required in making a determination even when suspicion about a product is aroused. Therefore Plaintiff’s assertions are baseless and lack cogency with a corroborative piece of evidence from N.P.A. that an infraction had occurred.

The foregoing are salient parts of evidence adduced on ISSUE ‘2’

## **08. EVALUATION OF EVIDENCE**

The Plaintiff has failed to lead sufficient evidence in support of his claim that adulterated fuel has been accepted by Defendant at Yawkwei Radiance filling station, which had affected motorists and had been investigated by N.P.A. and confirmed as such.

It is evidence of the affected motorists and an expert opinion, preferably from N.P.A. the Industry Regulator that will suffice to establish this issue.

In effect Plaintiff has failed to lead material evidence on the issue.

On the preponderance of the probabilities, Plaintiff has failed to establish ISSUE ‘2’.

(b) On ISSUE '1', on which Defendant carries the burden of proof, these are the primary facts that ought to be established by it.

Firstly, it must be established that, Plaintiff failed to keep loss control book, secondly, he failed to generate monthly report from the relevant three (3) months, thirdly, he failed to account for a quantity products and equally failed to account for cash received after sale of product etc.

The allegations made by Defendant on the GH¢10,000.00, in its pleadings is that manual checks or investigation it conducted revealed that Plaintiff had sold products but failed to account for the money as per manual check or inspection of metre readings.

The pleadings is also to the effect that Plaintiff failed to keep Loss Control Book and equally failed to generate and forward Daily Variance Reports notwithstanding the fact that Plaintiff had denied these facts and tendered Exhibit 'D, D1 and D2', which are the Loss Control Books as well as Daily Variance Reports.

Whilst Plaintiff was under cross-examination, the Defence through various questions tried to attribute to him the explanation or reason for the shortage was due to evaporation of the product, when, it never pleaded such facts nor made a disclosure of when and by whom, Plaintiff was heard to have said the fuel product had evaporated hence the shortage.

In addition, the Defendant asserted that, the shortage of GH¢10,000.00, was in the form of cash as per investigation carried out by the Zonal Coordinator. But surprisingly, questions put to Defendants Representative elicited answers to the

effect that, the shortage was made up of product loss and cash which was unaccounted for. This explanation appear to be an afterthought in my estimation.

However, the consistent story told by Plaintiff in his pleadings and evidence is that, the shortage is attributable to operational losses. He gave 615 as the loss which is SUPER Petrol Product and 1,778 as loss which is diesel product and which is diesel product, and added that the loss was not in the form of cash.

Plaintiff had defined operational loss as that loss that occurs in shortage of product which is in the tanks underground which could be determined by DIP readings and loss that occurs when tankers that haul and deliver the product, make short delivery which is simply referred to as BRV.

The Defence had testified about 615l and 1,778 as super and diesel products that were detected as short falls.

The figures or volumes mentioned by Defendant were the same as what Plaintiff had said.

It is apparent, it is not a mere coincidence but a confirmation of the veracity of what Plaintiff had said about those figures or volumes of short falls.

Furthermore, Defendant mentioned BRV of 640 for super and 220 for diesel, were shortfalls detected. But failed to give its value, unlike GH¢7,881.34, given as values for figures or volumes mentioned earlier.

It is Defendants evidence that, it adopted other methods to ascertain the loss or the shortage, and details of the Accounting Method were stated and the Reconciliation of products and values method was also stated.

The striking revelation about these methods is that, they all disclosed GH¢10,004.48 or in approximation GH¢10,000.00 as the quantum of shortage or loss.

This is the exact figure Plaintiff has also testified about.

The Defendant has accepted the fact that, BRV and others are factors that can affect volume of products delivered and when investigated and properly confirmed, it may be accepted as operational loss.

The Defence has alleged that, 11,000 litres of super product delivered on 2/10/2014, was unaccounted for by Plaintiff. This has been denied by Plaintiff. My examination of Exhibit '1' and entries made on 2/10/2014, do not reflect that volume of product as having been delivered as alleged. And no other corroborative document or invoice was cited to establish the veracity of that claim.

From the foregone, this Court accepts GH¢10,000.00 as the approximate amount of shortfall or loss, because both sides have agreed on this amount.

This court on the preponderance of the probabilities finds and holds that, the amount as stated supra is not cash which was misappropriated by Plaintiff, but constitute operational loss as asserted by Plaintiff.

## **09. THE LAW**

- a) Parties to an employment contract, are in employer and employee relationship. This contract may be terminated for one reason or the other. There are two (2) categories of this relationship namely, public and private.



The sources of law in resolution of employment contract dispute are the English Common Law Principles, Ghana Common Law, as in the form of binding judicial decisions, statutes – the Labour act, 2003, Act 651 and public law as based on constitutional provisions in the 1992, Constitution, as interpreted by the Supreme Court.

Generally speaking at Common Law, an employer and his employee are free and equal parties to the contract of employment. Hence either party has the right to bring the contract to an end in accordance with its terms. Thus an employer is legally entitled to terminate an employee's contract of employment whenever he wishes and for whatever reasons, provided only that he gives due Notice to the employee or pay him his wages in lieu notice.

I refer to the case:

*KOBEA*

*VRS*

*TEMA REFINERY*

*[2003/2004] SCGLR*

- b) Sections 10 and 11 of the Labour Act [supra] has made provisions on the rights and duties of a worker. These provisions are applicable to private and public sector workers alike, with very few exceptions.

Sections 12 (1) of the statute on the formation of employment contract provides:

*“The employment of a worker by an employer for a period of six (6) months or more or for a number of working days*

*equivalent to six (6) months or more within a year SHALL be by a written contract of employment.*

*(2) A contract of employment shall express in clear terms the rights and obligations of the parties.”*

Section 13: Written Statement of Particulars of Contract of Employment:

*“Subject to the terms and conditions of a contract of employment between an employer and worker, the employer SHALL within Two (2) months after the commencement of the employment furnish the worker with a written statement of the particulars of the main terms of the contract of employment in the form set out in the First schedule signed by the employer and the worker.”*

The evidence that has been outlined and evaluated showed that this dispute had been fought mainly on the turf of performance of the contract and termination of it.

Sections 15 and 17 of the statute specifies the grounds and procedure for terminating a contract of employment. The grounds or reasons offered in support of termination must reflect justification for the decision. And the procedure specifies the Manner in which the termination was effected or could be effected. It follows that the ground or reason, which is the justification must exist first before the procedural steps towards termination are taken. But I must hasten to add that, there is no legal obligation to provide reasons

However, Sections 62 and 63, have enumerated FAIR and UNFAIR grounds of termination, but do not impose a legal obligation to give reasons.

Indeed Sections 15 and 17 are codifications of the Common Law principles of employment contracts and are directed at the Courts in their examination of the facts in their determination of whether the termination is FAIR or UNFAIR, that is to say whether the termination is wrongful or unlawful. But Sections 62 and 63 are actually legislative interventions, addressed to the National Labour Commission and their enforcement is vested only in the Labour Commission.

Section 15 of the statute has mutual agreement, ill-treatment or sexual harassment, death, expiration of period of employment, sickness incapacitation as well as INCOMPETENCE and proven MISCONDUCT, as grounds on which a contract may be terminated.

It is the case of Defendant that, Plaintiff has been disrespectful and did not manage its business efficiently leading to loss of GH¢10,000.00, the above assertions when proven, could amount to incompetence and misconduct on the part of the Plaintiff, and therefore a FAIR ground of termination of his employment contract.

Misconduct may take various forms such as dishonesty, stealing, fraud etc. And disrespectful conduct takes various forms too. For instance, refusal to obey lawful and reasonable instructions.

Generally misconduct which is proven will entitle the employer to dismiss the worker in question.

The dismissal may be summary or may be on Notice and may result from the conclusion of a disciplinary procedure which establishes the fact of the misconduct or disrespectful behavior.

The fact of disrespect and misbehavior must exist, because it has been established and found after a fair process of investigation. It must not be prima facie case of misconduct but the facts must be conclusively determined. The process of enquiry will afford both the employer and the employee to put forward their case and learn more about mitigating or aggravating circumstances about the conduct in dispute and the commensurate sanction or reprieve to administer to ensure a healthy labour relation in the work environment.

Besides Sections 15 and 17, which prescribes Notice with time lines given the duration of the employment contract is another mode of terminating the contract.

The Reliefs sought in this action are a declaration that Plaintiff had been dismissed and that it was wrongful, for which reason, damages must be paid.

Dismissal is an appropriate sanction when there is commission of an offence or misconduct.

I refer to the case:

*SENKYIRE*

*VRS*

*ABOSO GOLDFIELDS*

*[2006] SCGLR*

The Supreme Court held that where the trust worthiness of a worker is in doubt, the employer is entitled to dismiss him. The Apex Court also held that, a worker's misconduct which is inconsistent with the due and faithful discharge of his duties, as a worker for which he has been engaged, entitles the employer to dismiss him.

In *AKOMEA*  
*VRS*  
*TEMA REFINERY*  
*[supra]*

The Supreme Court stated as follows:

*“At Common Law, an employer can dismiss an employee for many reasons, such as misconduct, substantial negligence, dishonesty etc. These act may be said to constitute such breach of duty by the employee as to preclude the further satisfactory continuance of the contract of employment as repudiated by the employee.”*

The dismissal of an employee may be summary or non-summary. It is without notice in the former instance and with notice in the latter, where a worker is in fact guilty of misconduct which is so grave that it justifies instant dismissal the employer can rely on the misconduct in defence of any action for wrongful dismiss.

I refer to the case:

*LEVER BROTHERS*  
*VRS*  
*ANNAN*  
*[1989-1990] 2 SCGLR 383*

In the case:

*LAGUDA*  
*VRS*  
*G.C.B*  
*[2005/2006] SCGLR 366*

It was held that, the law is well settled that the employer has the right to summarily dismiss an employee whose conduct is incompatible with the due or faithful discharge of his duties.

The Supreme Court in these two (2) cases cited was of the view that an employer is entitled to summarily dismiss a worker, he considers GUILTY of serious misconduct, such as dishonesty.

The Court reasoned that in such situation the employer is not required or obliged to set up an investigative process to give the worker a fair hearing.

In other words, the power to dismiss may be exercised in haste or on the spur of the moment and without reasons being given for the dismissal.

In private sector employment contract dispute adjudication, compliance with the rules of natural justice is not a ground to impugn the decision of an employer who exercises the power to dismiss its employee.

The position of the law was clearly stated as could be gleaned in the evergreen judgment of Date Bah J.S.C., speaking for the Supreme Court, [upholding my decision as the trial judge], in the case:

*BANI*

*VRS*

*MEARSK GH. LTD*

*[2011] SCGLR*

He delivered himself with these enduring words as follows.

*“Thus, once there was evidence on record sufficient to justify misconduct, the learned trial judge did not have to concern himself with whether there had been compliance with the rules of natural justice unless there was a contractual provision to the contrary.”*

- c) The Gordian knot to be untied in this trial is whether on ISSUE ‘1’, the Defendant has adduced sufficient evidence to establish conclusively a conduct that amounts to DISHONESTY or INCOMPETENCE or a form of MISCONDUCT that is grave to warrant the dismissal of Plaintiff?

There is evidence that Plaintiff had reported to the Head Office of Defendant Company on the 9/10/2014, and he had audience with the Managing Director and on 23/10/14, a team was dispatched to Yawkwei Filing Station to conduct investigation of the management of the facility.

This Court has stated its findings on the conclusion reached on the investigation already.

Plaintiff stated that, since then he had been directed to stay away from the station, even though this was contested, the Defendant admitted, it has stopped paying Plaintiff's emoluments since.

The Defendant did not give notice of termination of the contract to Plaintiff.

By Sections 12 of the Labour Act, Plaintiff who had worked for Defendant for about eight (8) months [i.e. March to October, 2014], should have been given a written contract. But the Defendant neglected to follow the law.

Section 13 of the Statute imposes a duty on the Defendant to furnish Plaintiff with particulars of the contract of employment. This Defendant also neglected to do.

The policy objective of the legislature is to establish a system where every worker in Ghana who has worked for periods stated in the Statute, must have a written contract, so that his rights and responsibilities of his employer could be identified and given effect to, in a case of a dispute arising between them. It is also my thinking that, it is to avert continuous casualization of labour and to generate data for national development planning, pension/SSNIT purposes and other requirements of national interest.

This objective is not defeated by deliberate act of omission or inadvertence. These Sections must be interpreted to the effect that the worker is deemed to have been furnished with such written contract.



The form of the contract is as in the schedule of the statute, and content in this particular case is deemed to be the same as the remuneration and other conditions Plaintiff had been enjoying as a worker of Defendant.

In other words, by operation of law, Plaintiff is deemed to have been furnished with a contract of employment document.

The above is my view on the formation of the contract of employment of Plaintiff.

Turning to how the contract was ended or terminated, it is my candid opinion that, Defendant has failed either to establish any of the grounds enumerated in Section 15 of the Labour Act [supra] or gave notice of the termination as required by 17 of the statute. Let alone showing that it has paid Plaintiffs wages in lieu of the notice.

The evidence of Plaintiff to the effect that he had been dismissed or his relationship with the Defendant was terminated verbally and by telephone call has not been rebutted.

At Common Law and Ghana Common Law, an employer can terminate an employment of the kind in this case without assigning reasons or conducting an enquiry. But it is not permissible to do so verbally given the employment contract of Plaintiff herein, as found and the facts as have been established in this trial.

## **10. FINDINGS:**

1. The shortfall in revenue at Yawkwei Radiance Filing Station to the tune of GH¢10,000.00 within the tenure of Plaintiff was as a result of factors

enumerated by plaintiff. It was neither due to misappropriation, dishonesty nor incompetence.

2. The Defendant has failed to establish sufficiently the basis for summary dismissal of Plaintiff who has not been found to have committed fraud nor any form of illegality whilst serving the Defendant.
3. The Plaintiff who by operation of law is deemed to have been furnished with a written appointment letter cannot be dismissed verbally, the neglect to serve such a decision in a written form on the facts and the law amount to constructive dismissal of Plaintiff.
4. The dismissal of Plaintiff by Defendant, this Court holds on the preponderance of the probabilities is wrongful.
5. This Court will accordingly dismiss Defendants Reliefs endorsed in its counter-claim as lacking merit.

**BY COURT:**

1. This Court enters judgment in favour of Plaintiff and against the Defendant on the reliefs endorsed on the writ of summons.
2. A contract of employment is clearly terminable, where an employer terminates an employee's appointment in breach of a contract of employment, the employer is liable to pay damages to the employee and that, the damages are not limited to salary in lieu of notice.

Thus for instance in the case:

*HEMANS*

*VRS.*

*G.N.T.C.*

*[1978] GLR 4 CD*

The Court of Appeal awarded the employee wrongly terminated four (4) months' salary in damages, though the notice period under the period was only one (1) month.

2. (a) In principle in the absence of any contrary statutory or contractual provision, the measure of damages in general damages for wrongful termination of employment under common law of Ghana is compensation based on the employee's current salary and other conditions of service, for a reasonable period within which the aggrieved party is expected to find alternative employment.

Put in other words, the measure of damages is the quantum of what the aggrieved party would have earned from employment during a reasonable time determinable by the Court, after which he should have found an alternative employment. This quantum is of course subject to the duty of mitigation of damages.

- (b) In line with principles stated in cases cited on award of damages in instances of wrongful termination or dismissal, this Court will award six (6) months' salary to Plaintiff as damages for his termination, in circumstances I have found to be wrongful.

- (c) In addition, Plaintiff is also entitled to general damages in the sum GH¢300,000.00 against the Defendant.
- (d) Cost of GH¢10,000.00 is awarded against the defendant and in Plaintiff's favour.

(SGD.)

**H/L NICHOLAS M.C. ABODAKPI**  
**JUSTICE OF THE HIGH COURT**

***REFERENCES:***

1. *KOBEA VRS TEMA REFINERY [2003/2004] SCGLR*
2. *SENKYIRE VRS ABOSO GOLDFIELDS [...] SCGLR*
3. *LEVER BROTHERS VRS ANNAN [1989/1990] 2 GLR 38*
4. *LAGUDA VRS G.C.B. [2005/2006] SCGLR 366*
5. *BANI VRS MEARSK GH. LTD. [2011] SCGLR*
6. *NUNOOFIO VRS. FARMERS SERI CO. LTD. [2007/2008] 2 SCGLR 926*
7. *ASHUN VRS. ACCRA BREWERY [2009] SCGLR 84*
8. *HEMANS VRS. G.N.T.C. [1978] GLR 4 CD*