

IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT OF JUSTICE COMMERCIAL DIVISION, HELD IN ACCRA ON MONDAY THE 25TH DAY OF MARCH, 2024 BEFORE HIS LORDSHIP FRANCIS OBIRI 'J'.

SUIT NO. CM/RPC/0348/2023

K2 POTENTIAL COMPANY LTD. - PLAINTIFF

VS

ROSE AGYEIWAA - DEFENDANT

JUDGMENT

The Plaintiff per its Writ of Summons filed on 15th March 2023, claims the following reliefs against the Defendant:

- a) Recovery of an amount of Four Hundred and Forty-Three Thousand, Sixty-Five Ghana Cedis (GHS 443,065.00) being the Defendant outstanding debt to the Plaintiff.
- b) Interest on the outstanding debt from 13th April 2022, until the date of final payment at the prevailing interest rate.
- c) Cost including solicitor's fees.

The Writ of Summons and the Statement of Claim were served on the Defendant on 17th March 2023, as per the affidavit of service commissioned on 20th March 2023.

The Defendant entered appearance on 23rd March 2023. The Defendant did not file any Statement of Defence.

The Plaintiff applied for and obtained interlocutory judgment against the Defendant on 5th June 2023. The Plaintiff served a copy of the interlocutory judgment and hearing notice on counsel for the Defendant on 20th June 2023.

Again, the Plaintiff served its pre-trial checklist, witness statement and all documents it intended to tender in the case on counsel for the Defendant on 11th July, 2023. Counsel for the Defendant was also served with hearing notice on the same 11th July 2023, for Case Management Conference scheduled for 18th July 2023.

However, the Defendant and her counsel were absent during the Case Management Conference on 18th July 2023. The Defendant counsel was again served with hearing notice to appear in court for the hearing of the case on 14th December, 2023. However, the Defendant and her counsel were absent without any reason.

When the case came up for hearing, the Plaintiff's representative testified as follows:

He is called Maxwell Effah and lives at House No. 58, Abonkor, Tema Newtown. He is the Marketing Manager of the Plaintiff's Company.

The Plaintiff is a registered company under the laws of Ghana and engaged in the supply of various frozen foods with frozen "cow feet" inclusive.

The Defendant was introduced to the Plaintiff by a friend named Stephen Mbroh in March, 2022. The Plaintiff had several communications with the Defendant after the introduction, for the Plaintiff to supply quantities of cow feet to the Defendant. It was agreed that the Defendant would make outright payment for each quantity supplied.

On 13th April 2022, the Plaintiff supplied 1,348 cartons of cow feet to Defendant at the price of 235.00 per carton making a total cost of Three Hundred and Sixteen Thousand, Seven Hundred and Eighty Ghana Cedis (GHS 316,780.00).

The Defendant made part payment of Two Hundred and One Thousand, Seven Hundred and Ten Ghana Cedis (GHS 201,710.00) after a week with an outstanding balance of One Hundred and Fifteen Thousand, Seventy Ghana Cedis (GHS 115,070.00).

On 29th April 2022, 1256 cartons of Cow feet at a cost of GHS 233.00 per carton were supplied to the Defendant. This amounted to Two Hundred and Ninety-Two

Thousand, Six Hundred and Forty-Eight Ghana Cedis (GHS 292,648.00). The Defendant did not make any payment.

He said, on 1st May 2022, a container of Cow feet was supplied to the Defendant. It had 1259 cartons, with each carton costing 233.00. This therefore made a total of Two Hundred and Ninety-Three Thousand, Three Hundred and Forty-Seven Ghana Cedis (GHS 293,347.00).

According to the Plaintiff's representative, the supply on 13th April, 2022 which had an outstanding balance of 115,070.00 and other supplies made the Defendant indebted to the Plaintiff for an amount of Seven Hundred and One Thousand, Sixty-Five Ghana Cedis (GHS 701,065.00).

He said, the Defendant started repaying her indebtedness to the Plaintiff. On 5th May 2022, she paid 80,000.00. Further, on 11th May 2022, an amount of One Hundred Thousand Ghana Cedis (GHS 100,000.00) was paid by the Defendant to the Plaintiff.

The Defendant again made a payment of Seventy-Eight Thousand Ghana Cedis (GHS 78,000.00) to the Plaintiff in the later part of May 2022.

The total amount paid by the Defendant to the Plaintiff came to Two Hundred and Fifty-Eight Thousand Ghana Cedis (258,000.00) out of the total outstanding amount of Seven Hundred and One Thousand, Sixty-Five Ghana Cedis (701,065.00) which she was owing.

This reduced the debt to the sum of Four Hundred and Forty-Three Thousand, and Sixty-Five Ghana Cedis (GHS 443,065.00) which the Defendant has failed to pay upon persistent demands.

The Defendant has evinced a clear intention not to pay her indebtedness in the sum of Four Hundred and Forty-Three Thousand, Sixty-Five Ghana Cedis (GHS 443,065.00) to the Plaintiff.

The Plaintiff representative therefore prayed the Court to grant the reliefs of the Plaintiff as set out in the Statement of Claim.

The Plaintiff representative tendered various documents in support of the Plaintiff's case. They were admitted and marked as exhibits 'A, A1, A2, A3 and B' without objection.

When the Plaintiff representative concluded his evidence in chief, he was not cross-examined because, the Defendant and her counsel failed to appear in court after being served with hearing notice.

In the case of **ANKUMAH v CITY INVESTMENT CO. LTD [2007-2008] SCGLR 1064**, the Supreme Court held per Adinyira JSC (as she then was), at page 1076 as follows:

"In any event, the defendant after several attempts was finally served but failed to appear in court. The trial court therefore rightly adjourned the case for judgment. A court is entitled to give a judgment in default, as in the instant case, if the party fails to appear after notice of the proceedings has been given to him. For then it would be justifiable to assume that he does not wish to be heard."

See also, REPUBLIC v COURT OF APPEAL; EX PARTE EASTERN ALLOY CO. LTD. [2007-2008] 1 SCGLR 371

It is therefore humble view, that since the Defendant and her counsel failed to appear in court after being served with hearing notices, the Defendant waived her right to be heard.

The law is also settled, that the right to be heard is an inalienable right which should not be denied a party. However, if a party is aware of a hearing date but fails to appear in court, it means, he has waived his right to be heard.

See: JULIUS SYLVESTER BORTEY ALABI v PARESH & 2 ORS [2018] 120 GMJ 1 SC

REPUBLIC v HIGH COURT (FAST TRACK DIVISION) ACCRA, EX PARTE STATE HOUSING CO. LTD (NO.2) (KORANTEN-AMOAKO – INTERESTED PARTY) [2009] SCGLR 185

REPUBLIC v HIGH COURT (HUMAN RIGHTS DIVISION) ACCRA, EX PARTE AKITA (MANCELL-EGALA & ATTORNEY GENERAL – INTERESTED PARTIES) [2010] SCGLR 374

Even in criminal cases where the stakes are high, a court can proceed to hear a case in the absence of an accused person, if he is aware of a hearing date but he refuses to appear before the court for the trial to be conducted in his presence after he has been duly notified of the trial. This is sanctioned under Article 19(3) of the 1992 Constitution. Therefore, the Defendant waived her right to be heard in this case.

The position of the law is settled by a number of authorities, that when a party makes an averment and the averment was not denied, no issue is joined and no further evidence need to be led on that averment. Similarly, when a party has given evidence of a material fact and was not cross-examined upon it, he needs not call further evidence to establish that fact. It implies admission.

See: KUSI & KUSI v BONSU [2010] SCGLR 60

FORI v AYIREBI AND OTHERS [1966] GLR 627 SC

DANIELLI CONSTRUCTION LTD. v MABEY & JOHNSON LTD [2007-2008] 1 SCGLR 60

WESTERN HARDWOOD ENTERPRISES LIMITED AND ANOTHER v WEST AFRICAN ENTERPRISES LTD [1998-99] SCGLR 105

It is therefore my opinion, that to the extent that the Plaintiff representative was not cross-examined, his evidence was not denied.

In civil cases when no crime is alleged, a plaintiff is to win his case on the preponderance of probabilities, under sections 11(4) and 12(1) of the Evidence Act, 1975 (NRCD 323)

See also, YORKWA v DUAH [1992-1993] 1 GBR 278 CA

TAKORADI FLOUR MILLS v SAMIR FARIS [2005-2006] SCGLR 882

However, where a defendant files a counterclaim in an action, then he is also to prove his counterclaim on the preponderance of probabilities. This is because he is the plaintiff in respect of the counterclaim. However, this is not the situation in the instant case.

See: FOSUHENE v ATTA WUSU [2011] 1 SCGLR 273

IN RE WILL OF BREMANSU; AKONU-BAFFOE & ORS v BUAKU & VANDYKE (SUBSTITUTED BY) BREMANSU [2012] 2 SCGLR 1313

VERONICA OPOKU v MARY LARTEY [2018] 119 GMJ 244 SC

NORTEY (NO.2) v AFRICAN INSTITUTE OF JOURNALISM & COMMUNICATION & ORS (NO.2) [2013-2014] 1 SCGLR 703

I am therefore of the view, that the Plaintiff per its evidence and the exhibits has proved its case on the preponderance of probabilities against the Defendant.

I have no reason to doubt the evidence of the Plaintiff and the exhibits its representative tendered in evidence without objection.

The Plaintiff documents which were tendered also support its case that it is entitled to judgment against the Defendant.

From the above analysis, my judgment is that the Plaintiff is entitled to all the reliefs it is claiming against the Defendant. The Plaintiff is to recover from the Defendant cash, the sum of GHS 443,065.00. I will award interest on the GHS 443,065.00 from 13th April, 2022 until the date of final payment at a simple interest rate.

I award cost of GHS 10,000.00 in favour of the Plaintiff against the Defendant. The Plaintiff action therefore succeeds against the Defendant.

SGD.

FRANCIS OBIRI

(JUSTICE OF THE HIGH COURT)

COUNSEL

KWAME ASARE BEDIAKO FOR THE PLAINTIFF

ADOMAKO-ACHEAMPONG FOR THE DEFENDANT

AUTHORITIES

- 1. ANKUMAH v CITY INVESTMENT COMPANY LIMITED [2007-2008] 2 SCGLR 1064**
- 2. REPUBLIC v COURT OF APPEAL; EX PARTE EASTERN ALLOY CO. LTD. [2007-2008] SCGLR 371**
- 3. JULIUS SYLVESTER BORTEY ALABI v PARESH AND 2 ORS [2018] 120 GMJ 1 SC**
- 4. REPUBLIC v HIGH COURT (FAST TRACK DIVISION) ACCRA; EX PARTE STATE HOUSING CO. LTD. (No.2), (KORANTEN-AMOAKO – INTERESTED PARTY) [2009] SCGLR 185**

- 5.** REPUBLIC v HIGH COURT (HUMAN RIGHTS DIVISION) ACCRA; EX PARTE AKITA (MANCELL-EGALA AND ATTORNEY-GENERAL - INTERESTED PARTIES) [2010] SCGLR 374
- 6.** KUSI & KUSI v BONSU [2010] SCGLR 60
- 7.** FORI v AYIREBI & OTHERS [1966] GLR 627 SC
- 8.** WESTERN HARDWOOD ENTERPRISES LIMITED AND ANOTHER v WEST AFRICAN ENTERPRISES LIMITED [1998-1999] SCGLR 105
- 9.** DANIELLI CONSTRUCTION LIMITED v MABEY & JOHNSON LTD. [2007-2008] 1 SCGLR 60
- 10.** YORKWA v DUAH [1992-1993] 1 GBR 278 CA
- 11.** TAKORADI FLOOR MILLS v SAMIR FARIS [2005-2006] SCGLR 882
- 12.** FOSUHENE v ATTA WUSU [2011] SCGLR 273
- 13.** VERONICA OPOKU v MARY LARTEY [2018] 119 GMJ 244 SC
- 14.** NORTEY (NO. 2) v AFRICAN INSTITUTE OF JOURNALISM & COMMUNICATION & OTHERS (NO. 2) [2013-2014] 1 SCGLR 703
- 15.** IN RE WILL OF BREMANSU; AKONU-BAFFOE & OTHERS v BUAKU & VANDYKE (SUBSTITUTED BY) BREMANSU; [2012] 2 SCGLR 1313