

IN THE CIRCUIT COURT HELD IN KUMASI ON MONDAY THE 31ST DAY OF OCTOBER, 2022 BEFORE HER HONOUR PRISCILLA DAPAAH MIREKU (MRS.), CIRCUIT COURT JUDGE.

SUIT NO. A2/22/19

ALFRED ANIM QUARSHIE

VRS

1. CYNTHIA AKOSUA BIRAGO

2. MR. GYEBI

JUDGMENT

The relationship between a lawyer and his or her client is not an ordinary one. Lawyers have an overarching duty to perform a legal service undertaken on a client's behalf to the standard of a competent lawyer.¹ The Plaintiff was once the counsel for the 1st defendant and he has instituted this action against the 1st Defendant and her husband (2nd defendant) for the following reliefs;

- i. An Order for the Recovery of Ten Thousand Six Hundred and Ninety-Five Ghana Cedis (GH¢10,695) with interest from date of action until date of final payment.
- ii. Any other Order(s) the Honourable Court may deem fit, necessary and equitable in the circumstances.

¹ Louis DeSignore, Understanding the Lawyer-Client Relationship (Insights & Articles; October 15, 2020),(<https://www.mckenzielake.com>)

This instant suit was instituted on the 15th day of August, 2018. The case of the plaintiff is that, sometime in 2013, he entered a service agreement with the 1st defendant to render legal services for her. That, the said agreement was under the order and direction of the 2nd defendant, the husband. According to the plaintiff, the agreement provided that the 1st defendant will pay twenty percent (20%) of the claim recoverable. That per the said agreement, he was to use his own money to finance the cause/matter by filling processes and also his legal fee which all will sum up to the 20% aforementioned. The Plaintiff alleges that he had conducted the case and almost to completion to judgment stage when without notice to him, the 1st defendant abrogated the agreement and engaged a different firm for continuity of her cause/matter. The plaintiff further avers that the defendants have not paid the services he rendered so far as on quantum merit. That he has demanded severally for the payment of services from both Defendants but to no avail. The Plaintiff says on the 10th day of April, 2018 he finally served the 1st Defendant with Notice of Bill of fees and she acknowledge same. That despite the bill of fees duly served on the 1st Defendant; she has failed to pay despite several demands hence this instant action. The plaintiff avers that despite the 2nd Defendant also severally promising to pay, he also has failed hence joined to the action.

The Defendants filed their defence to this suit and according to the defendants, they dealt with Alfred Anim Ouarshie of Dominion Chambers and not Majesty law Consult. The defendants denied almost all the averments of the plaintiff in his statement of claim and claims that it was the Plaintiff who rather abrogated the agreement thus he is not entitled to any payment from them. The defendants counterclaimed for the following;

- a. Damages for breach of contract.

- b. Recovery of GH¢500.00 (FIVE HUNDRED GHANA CEDIS) from the Plaintiff being an advanced payment to the plaintiff by the 1st Defendant for the preparation of the 1st Defendant's father's will which the Plaintiff has failed to do.
- c. Interest on the said GH¢500.00 (FIVE HUNDRED GHANA CEDIS) from September, 2013 till the day of final payment.

The issues adopted for trial were the following;

- 1. Whether or not the plaintiff is entitled to legal fee claimable.
- 2. Whether or not the Plaintiff has breached the Service Agreement.
- 3. Whether or not the Defendants are entitled to the counter claim.
- 4. Any other issue the evidence may reveal in the course of hearing.
- 5. Whether or not the 1st Defendant dealt with Alfred Quarshie of Majesty Law Consult or Alfred Quarshie of Dominion Chambers.
- 6. Whether or not the GH¢500.00 the 1st Defendant paid to the Plaintiff was an advanced payment for the preparation of the 1st defendant's father's Will or the Plaintiff's cost of transportation to the 1st Defendant's father's residence.

In the case of **The Executive Director (Economic & Organised Crime Office) Narcotic Control Board v. Nayele Ampete & Anor [2022] 176 G.M.J. 117 C.A at 121**, the Court of Appeal in a unanimous decision allowing the appeal states;

A person who makes an averment or assertion which is denied by his opponent has the burden to establish that his averment or assertion is true and he does not discharge this burden unless he leads admissible and credible evidence from which the fact or facts he asserts can be properly and safely inferred; failure of which the assertion is not true. Excerpt otherwise provided by law and until it is shifted, a party has the burden of persuasion as to each fact the existence of which is essential to the claim or defence he is asserting. ... furthermore, it must be noted that a party whose pleadings raises essential to the success of the case assumes

the burden of proving such an issue and it is incumbent on the party to produce admissible and credible evidence so as to avoid a ruling against him and the absence of the proof will attract or earn such a ruling.

Sections 11, 12 and 14 of the Evidence Act, 1975 (N.R.C.D.) 323 comes to mind when there is a discussion on the onus of proof in civil matters.

Section 11(1) provides that; *“For the purpose of this Decree, the burden of producing evidence means the obligation of a party to introduce sufficient evidence to avoid a ruling against him on the issue.”*

Section 12 also provides that;

“(1)Except as otherwise provided by law, the burden of persuasion requires proof by a preponderance of the probabilities.

(2)“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.

And Section 14 provides that; *“Except as otherwise provided by law, unless and until it is shifted a party has the burden of persuasion as to each fact the existence or non-existence of which is essential to the claim or defence he is asserting.”*

The first and second issues are to be discussed together and the issues are; whether or not the plaintiff is entitled to legal fee claimable and whether or not the Plaintiff has breached the Service Agreement.

The plaintiff testified for himself and called one other witness Beatrice Wollie a.k.a Akosua Dufie (herein after referred to as PW1). The plaintiff has alleged that he entered into a service agreement with the defendants which it was agreed he will be paid 20% of the claim recoverable after completion of the case but after conducting the case and

almost at judgment, the defendants took their brief to another lawyer without notice to him and have failed to pay his legal fees based on quantum merit. The defendants have denied same and rather accuse the plaintiff of abrogating their agreement. The plaintiff in proving his case tendered Receipts of payments of filing fees (marked as Exhibit "A" series), Notice of bill of fees (marked as Exhibit "B") and court proceedings and processes (marked as Exhibit "C" series). The plaintiff alleges that he paid for the filing fees which have been denied by the defendants. The Plaintiff did not tender the said service agreement but the 1st defendant tendered a memorandum of understanding (MOU) between the 1st Defendant and the Plaintiff which was to take effect on 19th July, 2013 which is marked Exhibit "1".

For there to be a breach, there must be an agreement. The defendants admit per their statement of defence that they entered into an agreement with the Plaintiff. The said agreement turns out to be an M.O.U. which the Plaintiff admits to it being the agreement entered into by the parties. Per Exhibit "1" the agreement was between the Plaintiff and the 1st Defendant and the 2nd Defendant signing as a witness. The percentage agreed on by the parties in the MOU was 15% and not 20% as claimed by the Plaintiff.

Also another question to be asked is whether an MOU is the same as a service agreement. For there to be an agreement, there, must be an offer and acceptance. The agreement can be oral or written. *Before it could be said that there had been an acceptance of an offer by an offeree, there had to be (a) positive evidence by words, in writing or by conduct from which the court might infer acceptance; and (b) the acceptance had to have been communicated to the offeror.*² Generally MOUs whether entered into in a private commercial setting or inter-state setting have been argued not to be binding but intent of the parties have

² Kwamina mensah & Christopher Nyinevi, *The Layer's Companion (A Guide to Researching Ghanaian Case Law)* (Ashmetro Prints; Kumasi, Ghana; 2016), page 408

been said to make it binding or not. In the Kenya case of Eldo City Ltd v. Corn Products Kenya Ltd (High Court, Nairobi Civil Case No. 37 of 2013), it was stated that "As to the question of whether MOUs are legally binding, I would sate that the same is partly a matter of construction of the particular document and partly a question of legal analysis."

The facts of the case clearly show that the parties that is, the plaintiff and the 1st defendant intended for the MOU to be a binding agreement. Thus, the said MOU (Exhibit "1") was binding on both parties (Plaintiff and 1st Defendant). There is nothing in the agreement or otherwise which shows that the 2nd Defendant was a party to the said agreement. The 2nd defendant can also not be describe as a guarantor as the plaintiff did not lead evidence to prove that he was same. Thus the 2nd defendant was not a party to the said agreement.

Per the agreement between the parties, the plaintiff was to bear all the cost in relation to the 1st defendant's case the plaintiff was conducting but the 1st defendant claims that the plaintiff demanded for transportation fees anytime they went to court and also she was the one paying for the filing fees of processes file. The plaintiff alleges that he paid for the filing fees but the transportation fees was a mandatory requirement under lawyers scale of fees out of pocket and as such did not fall under their agreement. It is trite that the Ghana Bar Association scale of fees allows lawyers to charge transportation but same must be communicated to the client and must expressly be agreed upon at the time the lawyer is being engaged. The evidence led by the plaintiff and the defendant clearly shows that there was no such prior agreement. It is therefore not surprising that when the plaintiff demanded for transportation and kept on increasing the fees, the 1st defendant was aggrieved.

The plaintiff tendered Exhibit "A" series to show that he was the one paying for the filing fees but the 1st Defendant insists that she paid for the filing fees and under cross

examination she was asked how come counsel had the receipts if she paid for the filing fees, she answered that any time she paid same, she sent the receipt and counsels copy back to him. This statement was also corroborated by the 2nd Defendant. This honourable court takes judicial notice to the fact that, most often if not always, the receipt for filing a process is stapled onto one of the processes which is usually the party filing the process copy. Out of the nine (9) receipts tendered by the plaintiff, only 2 of the receipts bears the plaintiff's name as the one the money were received from. The others bore the name of W. Kusi who per Exhibit "C7" was a lawyer from Dominion Chambers and Exhibit "C9" became counsel for the Plaintiff. None of the receipt tender bears the any of the defendants' name as the one who paid for the filing fees. As stated earlier, Exhibit "C9" shows that the said William Kusi once represented the 1st defendant in that case has he filed change of solicitor. This gives a clear indication that, whenever filing was done, the name of the lawyer in charge was written on the receipt and as such it is not enough proof to show that the Plaintiff paid for the filing fees or otherwise. The plaintiff Exhibit "B" also shows that the plaintiff himself did not add any filing fees refund to the cost he was claiming by the notice of bill of fees.

With the issue of the plaintiff demanding for the transportation, even though it was not prior agreed by the parties, when the plaintiff demanded same, she went ahead to pay same to the plaintiff. She did not indicate to the plaintiff that she was not going to pay or demand for her docket. Even when the plaintiff increased the transportation fees to One Hundred Cedis (GH¢100.00), the 1st Defendant only asked her husband the 2nd Defendant to talk to the plaintiff on her behalf. Thus, the nature of their agreement per their MOU changed and it would have been prudent for the Plaintiff and the 1st defendant to go back to the negotiation table. The 1st defendant testified that the plaintiff warned that he will not come to court if she did not pay the transportation and

it seems that, that was what happened on the day the 1st defendant was given her docket by PW1.

PW1 testified that her boss that is the plaintiff did not instruct her to give the docket to the 1st Defendant but rather she gave it to her to hold it for her as she had to go to the docket section to trace some documents. That by the time she was done and came back, the court had closed and left. The 1st defendants also testify that PW1 gave her the docket and that she had it till court closed for the day and when the plaintiff failed to come to court, she presumed the plaintiff had handed over her case to her as he has been threatening.

The evidence shows that when the docket was given to the 1st defendant, she did not call the plaintiff to enquire whether indeed he has stop representing her or otherwise. She rather took the case to another lawyer to conduct the case for her without notice to the plaintiff. It is for such situations that, the rules requires counsels taking briefs from a client coming from another firm to enquire from the client the reason of taking the said brief and confirm same from previous counsel to satisfy oneself there are no legal fees outstanding.

The next issue for consideration is whether or not the 1st Defendant dealt with Alfred Quarshie of Majesty Law Consult or Alfred Quarshie of Dominion Chambers. Whether the plaintiff was with Majesty Law Consult or Dominion Chambers, the 1st defendant admits engaging the plaintiff as her lawyer. Exhibit "1" which is the MOU is between the plaintiff personally and the 1st Defendant and not the chambers of the Plaintiff. Thus any indebtedness of the 1st defendant if any will be to the plaintiff.

The Plaintiff has led evidence to prove that the 1st defendant did engage her and there was a lawyer-client relation between them. The plaintiff further prove that indeed there was an agreement between them as to the legal fees but this honourable court finds that

the amount agreed on by the parties was 15% of the recoverable claim and not 20% as alleged by the plaintiff. The Plaintiff alleges that he had conducted the case and almost to completion to judgment stage and prays for GH¢10,695 with interest from date of action until date of final payment. Exhibit "B" shows how the plaintiff got the sum of Gh¢10,695 as money owed him by the 1st defendant but the said calculation does not show how counsel came by the value of Three Thousand Ghana Cedis (GH¢3,000.00) per a plot. The plaintiff also did not lead any evidence to show how he came by that figure.

The evidence before the court shows that, the 1st defendant engaged the plaintiff July 2013, the Writ was issue November 2013 and the 1st defendant took away her docket December 2017. The evidence clearly shows that the plaintiff did do some work on the docket and as such he deserves to be paid for work done by him. The processes he tendered by the Plaintiff shows that the last thing the Plaintiff did was to get the defendants in that case defence dismiss on 9th November 2017. This honourable court finds that there was a breach of agreement when the plaintiff demanded for the transportation fees but parties entered into another agreement when the 1st defendant accepted to pay for the transportation fees and filing fees as claimed by her. Thus, the 1st Defendant owes the plaintiff legal fees for work done by him.

Issues 3 and 6 will be discussed together as it has to do with the counterclaim of the defendant. The 1st defendant claims that she engaged the plaintiff to draft the Will of her father whom the plaintiff charged her and she paid part payment of Gh¢500.00 to the plaintiff. That the plaintiff after receipt of the money failed to draft the said Will. The Plaintiff denies same and avers that the GH¢500.00 was for payment of transportation of him carting the 1st defendant and himself to the 1st Defendant's father's place of abode. That he charged the 1st defendant GH¢2,500.00 but the 1st defendant did not pay same.

In the case of **Aryee And Akakpo v. Ayaa Idrissu [2010] SCGLR 891 @ 901**, it was held that,

“A party who counterclaims bears the burden of proving his counterclaim on the preponderance of the probabilities and would not win on that issue only because the original claim has failed. The party wins in the counterclaim on the strength of his own case and not on the weakness of his opponent’s case.”

The onus is on the defendant to prove that she paid GH¢500.00 to the plaintiff for the purpose as alleged. And to succeed in her claim she must lead sufficient and credible evidence to prove her case. She cannot rely on the weakness of the plaintiff’s case if any.

The defendants failed to lead a single evidence to support her claim. Mounting the witness box to repeat ones pleadings has been held not to be enough proof of one’s claim. The plaintiff’s explanation that the said amount was for his transportation seems more probable as the 1st defendant admitted under cross examination that the plaintiff transported them with his vehicle and she was not the one who bought fuel into the vehicle when same was used. Also the defendants is counterclaiming for damages of breach of contract. As aforementioned, when the plaintiff breached their MOU, the 1st Defendant accepted the changes to the agreement thus she cannot be allowed to cry wolf. Thus, the defendants failed in their counterclaim and same is dismiss.

Judgment is hereby entered for the Plaintiff but the court is of the view that in respect of the quantum merit of work done by the Plaintiff, he is entitle to the sum of Five Thousand Ghana Cedis as legal fees as the plaintiff was not the one who concluded the said suit and interest will run from date of judgment till date of final payment. Cost of Two Thousand Ghana Cedis (GH2000.00) is awarded against the 1st Defendant. The

plaintiff's case against the 2nd Defendant is hereby dismiss and cost of Two Thousand Ghana Cedis (GH¢2000) is awarded against the plaintiff for the 2nd Defendant.

SGD.

H/H PRISCILLA DAPAAH MIREKU (MRS.)

CIRCUIT COURT 2, ADUM – KUMASI

31ST OCTOBER, 2022