

IN THE CIRCUIT COURT HELD IN KUMASI ON WENESDAY THE 21<sup>ST</sup> DAY OF NOVEMBER, 2022 BEFORE HER HONOUR PRISCILLA DAPAAH MIREKU (MRS.), CIRCUIT COURT JUDGE.

SUIT NO. A2/96/2020

**SAMUEL ACHEAMPONG**

**VRS:**

**FREDERICK ADDAI AMPOFO**

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**JUDGMENT**

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The Plaintiff instituted this action against the defendant on 21<sup>st</sup> April, 2020 for the following reliefs;

- a. An order of the Honourable Court for the defendant to return 18 packed big sized food supplements at One Thousand One Hundred Cedis (GH¢1100.00) amounting to Nineteen Thousand Eight Hundred Ghana Cedis (GH¢19,800.00) and a packed small sized food supplement drugs at Six Hundred and seventy Ghana Cedis (GH¢670.00) amounting to Three Thousand Three Hundred and Fifty Ghana Cedis (GH¢3,350.00) all totaling Twenty-Three Thousand One Hundred and Fifty Ghana Cedis (GH¢23,150.00) which the plaintiff deposited with the defendant since January 2020 which the defendant has refused to return same to the plaintiff notwithstanding several demands.

OR

In the alternative pay the said amount stated above being the cost of the drugs which is in the custody of the defendant.

- b. An Amount of Five Hundred Ghana Cedis (GH¢500.00) being the cost of jacket the plaintiff through the defendant which the defendant has failed to deliver and also failed to return the Plaintiff's money to the plaintiff notwithstanding several demands.

It is the case of the Plaintiff that he gave some quantities of food supplement drugs to the defendant some time January 2020 to be sold at a health walk to be organized by him. That unfortunately the program did not come on and asked the defendant to return the said drugs to him but he failed to return all leaving 18 packed big size and 5 packed small size of the food supplements. That all attempts to retrieve same from the defendant have been to no avail hence the instant action. The plaintiff thus prays for the reliefs endorsed on the writ of summons aforementioned.

The defendant subsequently entered appearance and filed his defence denying the claims of the plaintiff and averring that he was not indebted to the Plaintiff in anyway and the plaintiff will be put to strict proof of his averments.

The issues set down for trial were as follows;'

1. Whether or not the parties are into the sale of food supplements with M-Global Alliance – in motion,
2. Whether or not the plaintiff left quantities of food supplement drugs in the care of the defendant to be taken later by the plaintiff for sale.
3. Whether or not upon demand for the said quantities of food supplement drugs from the defendant, the defendant was able to return some leaving some unreturned to the plaintiff.

4. Whether or not the total amount in relation to the unreturned food supplement drugs with the defendant amounted to GH¢23,150.00
5. Whether or not the plaintiff ordered a jacket through the defendant for an amount of GH¢500.00 which the defendant has not given nor paid the money involved to the plaintiff.
6. Any other issue(s) raised on the pleadings.

The parties were ordered to file their witness statements but the defendant failed to comply with the orders of the Honourable Court so the court proceeded with the case without the defendant. The plaintiff was called to prove his case and he testified on his one behalf and called one witnesses by name Francis Akwasi Afrifa to testify on his behalf.

The plaintiff testified that he is a businessman and also work with Alliance in Motion Global (Aim Global Ghana) and that he knows the defendant since infancy and also a co-worker of Aim Global Ghana. The Plaintiff testified that the defendant introduced him to the company aforementioned and that if he registers with the company he will be given products to use and when he became satisfied with its usage he will also introduce people to join. According to the Plaintiff when he registered, the company gave products worth GH¢5,856.00 which he paid for. That the defendant told him to allow him to keep the said products with him while he goes round schools churches and asks for date to introduce these products to them. That he realized the defendant was selling his product while he was going round the schools and churches thus he asked the defendant to give him seven (7) packs out of the twelve (12) packs he gave to the defendant to sell to a brother at Agona SHS leaving 5 packs with the defendant amounting to GH¢3,050.00. The plaintiff further testified that one Bishop Oscar and Pastor Afrifa purchased products worth GH¢14,500 and GH¢5,500 respectively and the said monies were given to the defendant through him but the defendant failed to

supply the goods to these two gentlemen aforementioned. The plaintiff also testified that the defendant asked him to order a suit for him from UK costing GH¢600.00 which the defendant has failed and or refused and neglected to pay. According to the plaintiff the total amount the defendant owes him stands at GH¢23,550.00.

Francis Akwasi Afrifa (PW1) testified that the parties in this suit came with samples of the food supplements and upon briefing him on how the products works, he became convince and gave GH¢6,216.00 to the defendant through the plaintiff which at the time could purchase seven (7) packs of the products. That the defendant gave him 2 packs of the product and promised to bring the remaining 5 packs later but failed to do so. In spite of several demands, for them, the defendant has failed to do so and the cost of the 5 packs stands at GH¢5,500.00.

Counsel for the defendant withdrew his services to him before the hearing of the case so the defendant was served with several hearing notices through substituted services but the defendant failed to come for to cross examine the said witnesses.

In the case of **Aryee v. Shell Ghana Ltd & Fraga Oil Ltd [2017-2020] 1 SCGLR 721 @ 724** the Supreme Court at Holding 4 stated

*In every civil trial the proof required was by preponderance of probabilities in accordance with Section 12 of NRCD 323 and the amount of evidence required to sustain that standard of proof was dependent on the nature of the issue to be resolved. Accordingly the court could rely on the evidence of a single witness in proof of the point in issue provided the witness was credible and had knowledge of the subject matter. Therefore, even the failure by a party himself to give evidence could not be used against him by the court in assessing his case.*

Section 12 of the Evidence Act, 1975 (NRCD 323) provides that, *“Except as otherwise provided by law, the burden of persuasion requires proof by a preponderance of probabilities”*

and Section 11 of NRCD 323 states, *“For the purposes 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.”*

In the case of **Zabrama v. Segbedzi [1991] 2 GLR 221 @ 246**, it was held that,

*“A person who makes an averment or assertion, which denied by his opponent has a burden to establish that his averment 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 properly and safely be inferred.”*

The defendant in his defence denied each and every assertion of the plaintiff except his place of abode. The defendant also put the plaintiff to strict proof of his claims thus; the onus was on the plaintiff to prove his case by the preponderance of probabilities even though the defendant did not file any witness statement. The defence of the defendant has not been struck out and thus still stands. (reference; CI 87)

The plaintiff in proving his claim testifies for himself and called PW1 as aforementioned. In the pleadings of the Plaintiff, he alleged he left some packs of food supplements in the custody of the defendant and when he asked the plaintiff to return same, the defendant returned some leaving some unreturned and all attempts for him to return same has proven futile. The evidence led by the plaintiff speaks of different facts. The plaintiff per his evidence alleges some two persons paid for the food supplement through him which the defendant failed to supply same. He also alleges that he got seven (7) out of the twelve (12) packs he gave to the defendant went he realized the defendant was selling his product. Thus it cannot be true that 18 of the big size packed food supplements were outstanding. The evidence led by the plaintiff supports the 5 small size packed food supplements outstanding. With the food supplements PW1 and the aforementioned allegedly bought from the defendant, the plaintiff will not be the

right person to sue the defendant for the return of their money or delivery of the products as according to the plaintiff the products were acquired from the defendant. This evidence is also not supported by pleadings.

With respect to issue one, two and three, the plaintiff did not tender a single evidence to prove that he and the defendant were co-workers at Aim Global Ghana and neither did he lead any evidence to prove that he left some quantities of food supplements with the defendant. If the plaintiff failed to prove these said issues set down then he will also fail in respect of issue four. The total amount claimed in his witness statement is GH¢23,550.00 and that claimed in his writ of summons is GH¢23,150.00. and GH¢500.00 making a total of GH¢23,650. As earlier discussed, the total number of Food supplements the plaintiff alleged to have given to the defendant differs from what he testified in his witness statement. Per his pleadings he gave some undisclosed number of packed food supplements to the defendant and 18 big packed size and 5 small packed sizes are unreturned by the defendant. While in his evidence in chief, 5 packed sizes are un returned while the defendant had taken some amounts of money from two individuals without supplying them with their products paid for.

With respect to the last issue, the plaintiff alleges the defendant asked him to buy a suit from UK for him which cost GH¢500.00 per his pleadings and per his witness statement, GH¢600.00. Aside the fact that the plaintiff did not tender anything to support his claim, there was also inconsistencies in his pleadings and witness statements. This court is a court of record and it is also in the best interest of a party whose averments has been denied to lead credible and sufficient evidence so that the trial court will find the existence of his assertions more probable. The plaintiff has failed to prove his case by the preponderance of probabilities as he failed to lead credible and sufficient evidence to prove his claim. The case of the plaintiff is hereby dismissed. There will be no order as to cost as the defendant has not be coming to court.

**SGD.**

**H/H PRISCILLA DAPAAH MIREKU (MRS.)**

**CIRCUIT COURT 2, ADUM – KUMASI**

**21<sup>ST</sup> NOVEMBER, 2022**