

IN THE CIRCUIT COURT HELD AT ODUMASE-KROBO ON 5TH DECEMBER, 2022,
BEFORE HIS HONOUR FRANK Y. GBEDDY ESQ.

SUIT NO. A2/25/2018

DEBORAH TETTEH OF

HOUSE NO.K211/4

NUASO- NEWTOWN

VRS

MICHEAL SETH OF

NUASO – NEWTOWN

JUDGMENT DELIVERED ON

- i. The claims of the plaintiff against the defendant are the recovery of Ghc10,000.00 financial assistance given to the defendant since April 2016.
- ii. Ghc800.00 being incidental and miscellaneous expenses since April 2016 to date of action.
- iii. Plaintiff also prays for interest on the Ghc10,000.00 principal with effect from April 2016 to the date of final judgment at the current Bank rate.
- iv. Cost to be punitive. **PLEADINGS OF PLAINTIFF**

Plaintiff averment is that one Mr Teye Tawiah brought the defendant in the month of April 2016 for Ghc10,000.00 financial assistance from the plaintiff. Plaintiff also averred that in the verbal agreement, the defendant promised to pay up the Ghc10,000.00 within

6 months from the effective date of April 2016 but to no avail. Hence this writ for an order against the defendant to pay up the Ghc10,000.00 with an incidental cost of Ghc800.00 and interest to be calculated on the principal since April 2016 at a current Bank Rate.

PLEADINGS OF DEFENDANT

The pleading of defendant is that he collected only Ghc6,500.00 as a loan but with an interest of Ghc3,500.00 bringing same to the sum total of Ghc10,000.00. The defendant also averred that even though he could not pay up the sum total within the 6 months as he promised, he later provided an amount of Ghc4,700.00 as part payment but the plaintiff refused to collect same and he brought the case to the court.

PROOF: It is on the plaintiff to establish his case against the defendant on the balance of probabilities.

ISSUES;

- i. Whether or not the Ghc10,000.00 financial assistance is interest free.
- ii. Whether or not the financial assistance is Ghc6,500.00 and the interest on it is Ghc3,500.00.
- iii. Whether or not the Ghc10,000.00 should attract interest.
- iv. Whether or not the interest should be calculated on only Ghc6,500.00
- v. Whether or not the defendant made an attempt to make part payment of Ghc4,700.00.

EVIDENCE OF PLAINTIFF.

She is called Deborah Tetteh. She told the court that the defendant was brought by her own friend called Mr. Tawiah Teye for an amount of Ghc10,000.00 as financial assistance. Plaintiff stated that in the April 2016 she gave the money to the defendant who promised to pay back within 6 months but to no avail. The plaintiff also stated that if the defendant failed to return the principal within the 6 months, then an interest of Ghc3,000.00 would be paid on the Ghc10,000.00. This amount of Ghc3000.00 interest had not been pleaded.

CROSS EXAMINATION

The plaintiff told the defendant that the financial assistance is Ghc10,000.00 but not Ghc6,500.00.

Q: You gave me Ghc6,500.00 but not Ghc10,000.00?

A: I gave you Ghc10,000.00.

EVIDENCE OF PW1

He is called Tawiah Teye the witness who brought the defendant for the financial assistance. The PW1 also stated that in his present, the plaintiff gave financial assistance of Ghc10,000.00 on 20th April 2016 to the defendant. The defendant according to PW1 promised to settle the principal and the Ghc3,000.00 interest within 6 months from the effective date of 20th April, 2016 but failed to do so.

CROSS EXAMINATION BY DEFENDANT TO PW1.

The defendant stated still that it was a principal of Ghc6,500.00 that he received from the plaintiff with the promise to add interest of Ghc3,500.00. The defendant without pleading also stated that he made part payment of Ghc4,000.00 leaving a balance of only 2,500.00

to pay to make up to total of Ghc6,500.00 PW1 insisted that the financial assistance is Ghc10,000.00 with Ghc3000.00 interest.

EVIDENCE OF DEFENDANT.

He is called Teye Michael. He stated that he approached the PW1 Teye Tawiah who assisted him to contract a loan of Ghc6,500.00 from the plaintiff. He also stated that the loan according to the verbal agreement was to be paid within 6 months with the effective date of contracting the loan. The defendant stated that even though he could not keep the 6 months mandate, he made an effort to make part payment of Ghc4,700.00 which the plaintiff denied to take. This time the defendant told the court that the witness Teye Tawiah was not present when the loan was advanced by plaintiff to defendant.

BY COURT: But in the defence (pleading) of the defendant, the defendant categorically stated that the witness Teye Tawiah (PW1) was present when plaintiff gave him the loan. Defendant said nothing of the interest of Ghc3,500.00. Defendant said nothing of part payment of Ghc4,000.00 by him.

Defendant said nothing on the balance of Ghc2,500.00 left for him to settle.

CROSS EXAMINATION BY PLAINTIFF TO THE DEFENDANT.

The defendant insisted that the loan was only Ghc6,500.00 with an interest of Ghc3,500.00. He insisted later also that the loan amount was released to him without the presence of PW1 who is Teye Tawiah.

BY COURT: This evidence is contrary to what is pleaded by the defendant.

FACTS/ LAW EVALUATION

The plaintiff Deborah invited one Teye Tawiah as her PW1 and in corroboration, both gave evidence that on the 20th April 2016, the financial assistance of Ghc10,000.00 was given to the defendant Teye Michael by the plaintiff in the presence of the Teye Tawiah. Both also stated that the defendant in the verbal agreement agreed to pay up the loan within 6 months of contracting of the loan with an interest of Ghc3,000.00. It is a corroboration of the plaintiff and her witness that the defendant since failed to pay up the loan and the interest. Further, the defendant without any witness stated that he took only Ghc6,500.00 as a loan from the plaintiff and the agreement was that he should settle the loan with interest of Ghc3,500.00 within 6 months from the month of contraction of the loan which he failed to settle anyway. In his defence or pleading, the defendant was categorical that the plaintiff gave him the Ghc6,500.00 in the presence of PW1 Teye Tawiah hence defendant insisted the PW1 be invited to testify. The same defendant deviated from his defence and alleged that the Ghc6,500.00 loan was advanced to him without the presence of the PW1. Defendant did not plead making any part payment in his defence or his evidence in chief but in his cross examination to the PW1 defendant stated that out of the Ghc6,500.00 loan, he made part payment of GHC4000.00 leaving a balance of only Ghc2,500.00. The defendant according to laws of contract may discern into the arena of contradiction since his defence or pleading is invariance with his court evidence as already analyzed.

In the cases of Tanko Vs Karim [1989-90] 2GLR 189 C.A, in the dictum of Osei Hwere J.A, Atadi Vs Ladzekpo [1981] GLR218 CA Per Adjei J.A and in the case of Ankra Vs Ankra [1966] GLR60 per Ollenu JSC, it is a stated law that a party's contradiction or deviation in the pleading or in the evidence before court on major issues

should not be admissible. Such an oversight whether it is due to negligence or not would affect the efficacy of the party's evidence and the case in general.

According to the Evidence Act 1975 (NRCD 323) Sections 11(1), 11(4) and 12(1), it is always the duty of the party who avers to produce evidence to the proof of that averment on the balance of probabilities. In the further cases such as

1. Osae Vs Adjeifio [2007 – 2008] 1GLR @502 Per Adinyira JSC
2. Sarkodie Vs F.K.A Company Ltd [2009] SCGLR 65 Per Wood JSC
3. Ababio Vs Akwesi [1994-95] 2GBR 77 Per Akins JSC and
4. Zabrama Vs Segbedzi [1991] 2GLR221 CA, etc,

it is held variously but as a cardinal requirement that for the evidence of a party to pass the test of proof on the balance of probabilities, such a party who avers should prove the averment in his/her evidence to the satisfaction of the court. After the trial, the plaintiff was able to establish her averment on the balance of probabilities.

BY COURT:

- i. I hereby hold that the defendant should pay the amount of Ghc10,000.00 to the plaintiff.**
- ii. An interest according to current bank rate should be calculated on the Ghc10,000.00 with effect from the 20th April 2016 until the final payment of the loan.**
- iii. Ghc1000.00 as an incidental and miscellaneous cost must be paid by the defendant to the plaintiff.**
- iv. Cost of Ghc1000.00 against defendant.**

SGD

H/H FRANK Y. GBEDDY

CIRCUIT COURT JUDGE