

**IN THE CIRCUIT COURT ONE (1) ACCRA, HELD ON TUESDAY, 28TH DAY
OF FEBRUARY, BEFORE HER HONOUR AFIA OWUSUAA APPIAH (MRS).**

**SUIT
NO.C8/21/2021**

- 1. CYNTHIA ADUSU**
- 2. JULIET DORMENYO**
- 3. HOPE DORMENYO**

PLAINTIFFS

**(SUING AS ADMINISTRATORS OF
THE ESTATE OF THE LATE OSCAR
DORMENYO) HOUSE NO GC 104-
8098
ABLEKUMA ACCRA**

V

GREEN HOUSE GLASS FACTORY

DEFENDANT

JUDGMENT

This writ was initially instituted by 1st and 2nd plaintiffs and on Benjamin Kumator against Defendants herein. Subsequently with leave of court granted on the 22/02/2022, the said Benjamin Kumator was non suited and Hope Dormenyo included as a 3rd Plaintiff. Plaintiff's subsequently amended the title of the suit on the writ of summons and statement of claim and filed the amended processes on 0/3/2022.

Plaintiffs in their statement of claim, avers that they are the administrators of the estate of the late Oscar Dormenyo who was an employee of the Defendant's company. They stated that the deceased was employed by the Defendant as a labourer and through determination and hard work rose through the ranks to the position of a foreman at the time of his untimely death which occurred in the course of the discharge of his duties. At the time of his demise, the deceased was earning GHc55 a day with monthly wage of GHc1485. According to them, on 7/9/2019, the deceased was badly injured in the head whilst offloading quantities of glass belonging to the Defendant leading to his death that same day. They

contend that Defendant was highly negligent in failing to provide safety and protective clothing for the deceased for his line of work. Plaintiffs further averred that Defendants after the death of the deceased failed to notify the Labour Commission of the accident at the work place leading to the death of the deceased. Defendants according to them had failed to honour its promise to pay for the funeral and burial expenses of the deceased as well as the compensation due his dependants made up of a wife and 7 children. All attempts by the Labour commission to address the situation had been ignored by the Defendants. Plaintiffs therefore seek per their endorsement on the writ of summons the following reliefs;

a. Declaration that on the 7th day of September, 2019 the late Oscar Dormenyo suffered a fatal injury which injury arose out of and in the course of his employment with the Defendant.

b. An order directed at the Defendant to pay an amount of GHS 89,100.00 to the Plaintiffs being sum equivalent to sixty months earnings of the deceased as provided in the Workmen Compensation Act, 1987 (P.N.D.C.L. 187).

c. Interest on relief "a" from January, 2020, being the latest date by which any assessed compensation should have been paid, till date of final payment.

d. General Damages for negligence.

e. An order of the Court compelling Defendant to reimburse plaintiffs the sum of GHC 7,200.00 being loan taken by Plaintiffs for the funeral and burial expenses of the deceased.

f. Interest on relief "e" from September, 2019 till date of final payment.

g. Cost of the suit herein including Solicitor's Cost.

Defendant upon service of the writ of summons and statement of claim and amended writ of summons and statement of claim on Defendant through it's managing director Mr Lii on 4/2/22 and 29/3/22 failed and or refused to enter

appearance to the action. The statement of defence was a general denial of the averments of Plaintiffs and stated that Plaintiffs had not demanded a refund of their money neither had they returned the documents given to them in respect of the land. On 11/8/22, the court upon an application on notice filed by Plaintiff's entered interlocutory judgment against the Defendant in default of appearance in respect of the reliefs endorsed on the writ of summons and adjourned the matter for hearing of Plaintiff's case.

Defendants were served again with the witness statement of Plaintiff's two witnesses together with pre-trial checklist on 4/10/2022 and subsequently served with hearing notice of the court's sitting on 6/12/2022 on 29/11/22. Defendants once again paid no heed to the court processes. It is trite learning that where a court has taken a decision without due regard to a party who was absent at a trial because he was unaware of the hearing date that decision is a nullity for lack of jurisdiction on the part of the court. See **Barclays Bank v Ghana Cable Co. [2002-03] SCGLR 1** and **Vasque v Quarshie [1968] GLR 62**. However, where the party affected was sufficiently aware of the hearing date or was sufficiently offered the opportunity to appear but he refused or failed to avail himself (as evident in this case) the court was entitled to proceed and to determine the case on the basis of the evidence adduced at the trial. See *In re West Coast Dyeing Ind. Ltd; Adams v Tandoh [1987-88] 2 GLR 561*.

Case of Plaintiff was accordingly heard in the willful and intentional absence of Defendant and matter adjourned for judgment today.

It is to be noted that, the failure of the Defendant to appear at trial to cross examine the Plaintiff on the evidence or challenge same either in cross examination or by contrary evidence did not exonerate the Plaintiff from proving their case as required by law.

The Standard of proof in civil case such as the present action is proof on the preponderance of probabilities. Section 12(2) of Act 323 defines preponderance of probabilities as "*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. In the case of **ADWUBENG V DOMFEH (1997-98) 1 GLR 282** it was held per holding 3 as follows: “...And sections 11(4) and 12 of NRCD 323 clearly provided that the standard of proof in all civil actions, without exception, was proof by a preponderance of probabilities...”. And in Section 14 of the Evidence Act, it is provided that “except as 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”. As stated in the case of **FAIBI VS. STATE HOTELS LTD [1968] GLR 411**, the onus in law lay on the party who would lose if no evidence were led in the case and where some evidence were led, it lay on the one who would lose if no further evidence were led.

The evidence of PW1 and PW2 on record stands is challenged or disputed. Supreme Court in the case of **FORI v. AYIREBI AND OTHER [1966] GLR 627** held “when a party had made an averment and that averment was not denied, no issue was joined and no evidence need be led on that averment. Similarly, when a party had given evidence of a material fact and was not cross-examined upon, he need not call further evidence of that fact”.

Relief “a”

I would determine the first relief of plaintiff i.e Declaration that on the 7/9/2019, the late Oscar Dormenyo suffered a fatal injury arising out of and in the course of his employment with Defendant.

Plaintiffs did not give evidence personally in the matter but called two witnesses. PW1, William Dormenyo a brother of the deceased and a former employee of the Defendant testified that he knows plaintiffs as the administrators of the estate of his late brother per Letters of Administration granted to them by the High Court of Accra. He tendered

in evidence as exhibit A, a copy of letters of administration issued by the District Court, Dodowa. According to him deceased was a dutiful and hardworking employee of the Defendant's company for several years and full of life when he left home for work on the 7/9/2019. On getting to the workplace, he PW1, deceased together with four other co-workers were tasked to offload large quantities of glass large in dimension and heavy in weight belonging to Defendant's company from a shipping container. To offload the glasses, he and the deceased and two other co-workers climbed the truck unto the container and started unpacking the glasses and lowering them one by one to the two other co-workers on the ground for onward carriage to the warehouse. He recounted that they had taken down few units of the glasses when the pack of glasses caved in from the top and fell on Defendant who had no means of escape. Due to the weight of the glasses, they were unable to get the deceased from underneath the glasses and called an ambulance quickly but it was too late to save his life. PW1 contended that Defendant failed to provide him, deceased and other co-workers any safety and protective working gears and a safe system of work leading to the death of deceased. He contended further that the injury that resulted in the death of the deceased arose out of and in the course of his employment.

The evidence that the deceased died as a result of large heavy glasses falling unto him whilst he was offloading same for Defendant in the discharge of his duties is not disputed. The evidence that the deceased was not wearing any safety or protective-working gears is also not disputed.

Every employer has a statutory obligation to ensure workplace safety and the safety of his employees. Section 9 (1) (a) and (c) of the Labour Act 2003, Act 651 provide thus "without prejudice to the provisions of this Act and any other enactment, in a contract of employment or collective agreement the duties of an employer include the duty to provide work and appropriate raw materials, machinery, equipment and tools; take practicable steps to ensure that the worker is free from risk of personal injury or damage to health during and in the course of the worker's employment or while lawfully on the employer's premises;

Section 118 (a) and (b) further provides that an employershall ensure that a worker employed by him or her works under satisfactory, safe and healthy conditions, shall provide and maintain at the workplace, plant and system of work that are safe and without risk to health; ensure the safety and absence of risks to health in connection with use, handling, storage and transport of articles and substances;

From the evidence of PW1 supra, Defendant failed to comply with these statutory obligations under the Labour Act, which resulted in the unfortunate and untimely death of the deceased herein on the 7th of September 2019.

PW2 in his evidence on oath corroborated PW1's evidence that the deceased was an employee of the Defendant and died in the course of his working for Defendant on the 7/9/2019. From the undisputed evidence of PW1 and PW2, it is established and same unchallenged that the deceased Oscar Dormenyo was an employee of Defendant and died in the course of his employment i.e whilst offloading large heavy glasses from a truck. The court hereby finds and declares that the late Oscar Dormenyo suffered a fatal injury which arose in the course of his employment with the Defendants.

Relief-“b”

Section 2 of the Workmen's Compensation Act, 1987, PNDCL 187 provides that Where a workman sustains personal injury by accident arising out of and in the course of his employment, his employer shall, subject to the provisions of this Law, be liable to pay compensation in accordance with this Law. Section 3 of PNDCL 187 further provides that “Where death results from the injury –

(a) if the workman leaves any dependents, the amount of compensation shall be a sum equal to sixty months' earnings: but where in respect of the same accident compensation has been paid under the provisions of section 5, 6 or 7, there shall be deducted from

the sum payable under this paragraph any sums so paid as compensation;

(b) whether the workman had dependents or not, his employer shall pay all his medical expenses;

(c) if the workman left no dependents, his employer shall bear the expenses of his burial as required by custom;

(d) if the workman left any dependents, his employer shall bear expenses of his burial to the sum of two thousand cedis or as stipulated in the relevant Collective Agreement, whichever is the higher.

Section 12 (1a) of the Workmen's Compensation Act sets out the requirements for a notice of accident and for applications for compensation. It reads as follows.

(1a) Proceedings for the recovery under this Act of compensation for an injury is [sic] not maintainable

unless notice of the accident has been given by, or on behalf of, the employee within six months after the happening of the injury and before the employee has voluntarily left the employment in which the employee was injured, and unless the application for the compensation with respect to the accident has been made within six months or, in the case of death, within six months from the time of death.

Per the record, deceased died on the 7/9/2019. A complaint was formally lodged with the Labour Department and Defendant notified of the complaint on 4/11/2019 i.e two months after the death of the deceased. Dependents of deceased therefore gave notice of their claim for compensation to Defendants within the stipulated 6 months period in accordance with section 12 of PNDCL 187. From the authorities quoted supra,

Defendant are required to pay as compensation to the dependents of the late Oscar Dormenyo, plaintiffs herein, compensation equivalent to sixty months earnings/salary and bear funeral expenses to the tune of GHC 2,000 or as stipulated in a relevant collective agreement. Per PW2's testimony, deceased was on GHC1485 monthly wages at GHC55 daily. The court therefore finds that dependents of the late Oscar Dormenyo are entitled to 60 months wages of the deceased as compensation for the loss of life of the deceased. The amount of GHC 89,100 being 60 months wages at GHC 1,485 a month claimed by Plaintiff's under relief 2 of the writ of summons is accordingly granted.

Relief c

Plaintiffs claim interest on the compensation payable by the Defendants from January 2020 till date of payment. Plaintiff's case is that Defendant's have till date failed to pay the said compensation due them. Under the Labour Act, section 120, An employer is required to report as soon as practicable and not later than seven days from the date of the occurrence to the appropriate government agency, occupational accidents and diseases which occur in the workplace.

Section 13 (1) and (2) of PNDCL 187 also provides"

(1) When the death of a workman from any cause whatever is brought to the notice of or comes to the knowledge of his employer, the employer shall, within three months after the occurrence of the death, give notice thereof to the nearest Labour Officer.

(2) The notice shall state the circumstances of the death of the workman if they are known to the employer.

There is no evidence on record that Defendant's notified the Labour Officer of the death of the deceased. A perusal of exhibits B, C and D tendered by PW2 corroborate PW2's evidence that he notified the Labour Department of the death of the deceased.

Interest is calculated on an amount due and owing. The basic requirement for the award of interest is that, the Court should find as a fact that, a certain sum is owed by the judgment debtor to the judgment creditor by way of contract, damages or business transaction. Once that condition was satisfied, the Court has power to grant interest on the sum owed. (S.A BROBBEY'S PRACTICE & PROCEDURE IN THE TRIAL COURTS & TRIBUNALS, 2ND EDITION PAGE,414-415). DELLE & DELLE VRS OWUSU AFRIYIE (2005-2006) SCGLR 160.)

Section 35 of PNDCL187 provides that

“(1) Where a workman has become entitled under this Law to the payment of compensation by his employer, the Chief Labour Officer or any other Labour Officer authorised in that behalf by the Chief Labour Officer shall, forthwith, notify the employer of that workman of the amount of the compensation payable by the employer to that workman, and where the amount of the compensation has been altered under section 15 of this Law, the amount of the compensation so altered.

(2) Unless compensation is payable to the Court under this Law, the compensation shall be paid to the workman or his dependants within three months of the receipt by the employer of the notification given to him under subsection (1) of this section; but where the Court has been called upon to review or determine the amount of the compensation, the employer shall pay the compensation awarded by the Court within five weeks of the Court's award, and, if there has been an appeal to the High Court, within one month of the determination of the High Court thereon.

(3) In this section "compensation" shall include periodical payments.”

From this provision, The Chief Labour Officer of the Labour Department upon receipt of the petition of the death of the late Oscar Dormenyo from PW2 herein ought to have computed the compensation due and owing by the defendants by

virtue of the death of the deceased and served notice of same on the defendants as mandated under section 35 of PNDCL 187 quoted supra. Perusal of exhibit B and C dated 4/11/2019 and 12/6/2020, the Acting Chief Officer, invited the Defendant to the Department for a meeting to address a complaint received from the deceased person's head of family about his death arising from industrial accident in the course of his official duties. Exhibit D dated 26/6/2020 is a reminder to the Defendants to meet the Acting Chief Labour Officer for redress of the complaint by the deceased family upon their failure to heed to their former invitations. There is nothing in exhibits B, C and D to the effect that the compensation due the plaintiffs had been calculated and notice of same serve on Defendants as required under section 35 of PNDCL187. The compensation therefore although payable as at September 2019, in the absence of its computation, demand and service of the notice of compensation, Defendants cannot be said to have defaulted payment as at 20/1/2020 for interest to be calculated on same. In the absence of evidence of the compensation calculation having been served on the Defendants by the Labour Department and or the plaintiffs, Plaintiff's claim for interest effective 20/1/2020 is pre-mature and same refused. This notwithstanding rule 2 of **COURT (AWARD OF INTEREST AND POST JUDGEMENT INTEREST) RULES, 2005, C.A 52**

provides "Subject to subrule (2) each judgement debt shall bear interest at the statutory interest rate from the date of delivery of the judgement up to the date of final payment." Rule 1 of C.I 52 also provides that If the court in a civil cause or matter decides to make an order for the payment of interest on a sum of money due to a party in the action, that interest shall be calculated

(a) at the bank rate prevailing at the time the order is made, and

(b) at simple interest

The said compensation claim on which Plaintiff's seeks to calculate interest from 20/9/2019 has now in this judgment been calculated and ordered to be paid by

the Defendants to the Plaintiffs. Interest on relief 2 is therefore ordered to be calculated from date of judgment till date of final payment.

Relief “d”

Plaintiffs claim against the Defendants general damages for negligence.

General damages are awarded as compensation to a party for reasonable loss that the party is likely to suffer as a result of a breach of contract or agreement. Under the Labour Act, a breach of statutory duty of an employer attracts penal sanctions whilst an injury or accident suffered during the course and scope of employment of a worker gives that worker a statutory right to compensation under the Workmen’s Compensation Act. Section 118(5) of Act 651 provides) “An employer who, without reasonable excuse, fails to discharge any of the obligations under subsection (1) or (2), commits an offence and is liable on summary conviction to a fine not exceeding one thousand penalty units or to a term of imprisonment not exceeding three years or to both the fine and the imprisonment. “ Statutory compensation for injured workman and representatives of a deceased worker who dies in the course of his employment is governed by Workmen’s Compensation Act PNDCL 187. Section 1 and of the PNDCL 187 provides “This Law shall apply to workmen employed by the Republic as well as by private persons, except in the case of persons in the Armed Services of the Republic.; S 2(1) Where a workman sustains personal injury by accident arising out of and in the course of his employment, his employer shall, subject to the provisions of this Law, be liable to pay compensation in accordance with this Law. Section 3 of this Act further details the compensation to be calculated depending on the severity of the injury or same resulting in death. The provisions of Act 651 and PNDCL 187 cited supra seeks to compensate the worker or beneficiaries of a deceased worker of the loss they would incur as a result of the injury or death of the worker. Plaintiffs claim for a separate relief for damages for negligence after receiving compensation under PNDCL 187 would amount to double compensation in respect of the same cause of action. Claim for general damages for negligence is therefore refused.

Relief e

Plaintiffs herein further claims against the Defendants Recovery of the sum of GHc7,200 being monies the family expended in funeral rites and burial of the deceased. According to PW2, the family went for a loan of GHc7,200 to hold the funeral rites of the deceased. Under section 3(d) of PNDCL 187, where death results from injury of a worker, if the workman left any dependants, his employer shall bear expenses of his burial to the sum of five million Cedis (now GHc500) or as stipulated in the relevant Collective Agreement, whichever is the higher in addition to footing the entire medical expenses of the deceased prior to his death. From the evidence before the court, no mention is made of a collective agreement provision between employees and the defendant company. Therefore the inference is that the defendants upon the death of the deceased were liable to bear five million Cedis (old cedis) which is equivalent to five hundred Ghana Cedis of the funeral expenses of the deceased Oscar Dormenya. Plaintiffs are therefore only entitled to GHc500 from the Defendants for the burial expenses of the deceased per section 3(d) of PNDCL 187. Accordingly, the court orders Defendants to pay to the Plaintiffs the sum of GHc500 forthwith being the amount they are required by statute to pay towards the burial expenses of the deceased. Interest is to be calculated on this said sum which became due and owing in September 2019 from September 2019 till date of final payment.

Conclusion

From the totality of the evidence on record, judgment is entered in favour of Plaintiffs against Defendants as follow;

a. Declaration that on the 7th day of September, 2019 the late Oscar Dormenyo suffered a fatal injury which injury arose out of and in the course of his employment with the Defendant.

b. Recovery of the sum of GHS 89,100.00 to the Plaintiffs being sum equivalent to sixty months earnings of the deceased as provided in the Workmen Compensation Act, 1987 (P.N.D.C.L. 187) forthwith.

c. Interest on relief "b" from date of judgment till date of final payment.

e. Recovery of the sum of GHc500 being the amount Defendant are required to pay towards the burial expenses of the deceased under PNDCL 187).

.f. Interest on relief "e" from September, 2019 till date of final payment.

g. Cost assessed at GHC5,000.

1st PLAINTIFF ABSENT REPRESENTED BY KUMATROR BENJAMIN

2ND & 3RD PLAINTIFFS PRESENT

**VITALIS SUGLO HOLDING THE BRIEF OF PAUL OPOKU FOR
PLAINTIFFS PRESENT**

**H/H AFIA OWUSUAA APPIAH (MRS.)
(CIRCUIT COURT JUDGE)**