

IN THE CIRCUIT COURT OF GHANA, HELD IN ACCRA, ON
THURSDAY THE 13th DAY OF JULY 2023 BEFORE HER HONOUR,
KIZITA NAA KOOWA QUARSHIE (CIRCUIT COURT JUDGE)

SUIT NO C2/181/2020

KWAME DEBRAH = **PLAINTIFF**
SUING PER HIS LAWFUL ATTORNEY
COVENANT MANAGEMENT CONSULT LTD.
ONE AIRPORT SQUARE
AIRPORT - ACCRA

VRS

1. KENNEDDY DONKOR = **DEFENDANTS**
AKOSOMBO ROAD
GBESILE PHASE 2

2. ROSE QUAYE
AKOSOMBO ROAD
GBESILE ROAD

JUDGMENT

Plaintiff is a Ghanaian citizen and a businessman who brings this action through his (Plaintiff's) lawful attorney, Covenant Management Consult Limited a debt recovery company. 1st Defendant is a business man, a husband to 2nd Defendant and also engaged in the business of selling lands at the Kuntunse enclave in the Greater Accra Region of Ghana. 2nd Defendant is a business woman also engaged in the sale of lands at Kuntunse enclave in the Greater Accra Region of Ghana.

Per a Writ of Summons dated 18th March 2020, Plaintiff sought the following reliefs from this Honourable Court against the Defendant.

- a. An order for the recovery of the sum of Twenty Thousand Ghana Cedis (GH¢20,000.00) being Defendants' outstanding balance for lease of land owed to Plaintiff as at 20th January, 2019.

- b. Interest on the sum of GH¢ 20,000.00 at the prevailing commercial interest rate from January, 2019 till date of final payment.
- c. Costs on a full indemnity basis including legal fees.
- d. Any other costs.

On the 21st of April 2020, Defendants filed a conditional appearance through their lawyer. On the 16th of June 2020 a defence to the Plaintiff's claim was filed.

Plaintiff filed an application for directions on the 29th of June 2020 and the issue of whether or not Plaintiff was entitled to all the reliefs on his writ of summons and statement of claim was set down for trial.

The Plaintiff gave power of attorney to Covenant Management Consult Ltd, who subsequently represented him through one Mr. Olowu Deji.

Plaintiff had earlier filed a motion on notice for judgment in default of defence on the 12th of June 2020 which became moot after the defendant filed a defence on the 16th of June 2023.

Plaintiff's attorney Olowu Deji wrote a letter dated 15th December 2020 where on behalf of the Plaintiff he acknowledged payment of GH¢ 20,000 by the Defendants and proposed the following, which was captioned as **"Outstanding Payment as Agreed"**.

The letter outlined the following,

Payment of 50% of the interest at the prevailing Commercial bank rate (23 months) GH¢ 4, 8,981

Full payment of cost GH¢ 4000

Total GH¢8,981.50

Defendant's payment of GH¢20,000.00 took care of Plaintiff's first relief, leaving the interest and cost element to be determined.

On the 9th of March 2021 a witness statement was filed by the Plaintiff but was later expunged.

Defendant prayed for time to file his Witness statement out of time and when granted filed same on the 10th of March 2022. Attached to the Witness Statement was an Indenture dated 2nd of April 2019, Exhibit 1. Previously on the 21st of February 2022 Plaintiff had filed his witness statement and attached the following exhibits

1. Exh. A- Power of attorney by the Plaintiff to Covenant Management Consult
2. Exh. B- Indenture dated 2nd April 2019
3. Exh. C- Temporal receipt dated 20th January 2019
4. Exh. D- letter of acknowledgment of payment dated 15th December 2020.

On the 10th of March 2022 in addition to a pre-trial check list the Lawyer and counsel for the defendant filed a change of address. Case Management Conference was conducted on the 31st of March 2022. On the 20th of April 2022 the evidence of the parties was taken.

The case was adjourned to the 16th of May 2022 to determine the issue of interest since the Defendants had paid the amount of GH¢20,000.00 the Plaintiff claimed in their first relief.

The court differently constituted ordered for proceedings to be typed on the 27th of December 2022.

On the 4th of May 2023 the court set the issue of whether interest should be paid to the Plaintiff down for trial and ordered the parties to file written submissions which was filed by the Plaintiff's lawyer Sarah Kusi esq. on the 19th of May 2023.

The court had noted that despite service of various hearing notices at every date the case was called, neither Defendants nor their lawyer, showed up. A careful study of the case file revealed that the defendant's lawyer Robert Quartey Esq. was served the hearing notices personally. The court directed the Plaintiff to serve the Defendants at the new address of their lawyer which they did twice before the court proceeded with the determination of the remaining issues at hand.

FACTS

The brief facts are that sometime in January 2019, the Defendants who have had a long standing cordial relationship with the Plaintiff approached him to sell a piece of land situated at Kuntunse for the sum of GH¢35,000.00. Plaintiff said upon enquiry as to the condition of the land, the Defendants claimed that it was not occupied by anybody and there were no defects on the piece of land and that it was a good site for residential development.

Subsequently, the parties entered into a lease agreement with agreed terms that the sum of GH¢35,000.00 be paid in instalments.

According to the Plaintiff he paid a deposit of GH¢15,000.00 and an additional amount of GH¢ 5,000 aggregating the sum of GH¢ 20,000.00 leaving an outstanding balance of GH¢15,000.00.

Plaintiff said upon the performance of the payment of the substantial sum of money, he requested and received the indenture for the piece of land from the Defendants, upon which he proceeded to visit the piece of land before continuing to do full payments in a bid to ascertain the ownership and the condition of the piece of land from the Defendants. His checks revealed that the land is a swampy area and contacted a surveyor for professional advice. He subsequently requested for a full refund of his money.

Plaintiff averred that the current action in court is as a result of the wilful neglect of the Defendants to pay their debts despite the issuance of a final demand notice on the 9th of October, 2019 to demand for payment.

The Defendants in their defence averred that they are not in the business of sale of land. Defendants stated further that the Plaintiff approached the 2nd Defendant and after being satisfied after inspecting the land that it was suitable for putting up a residential property started making periodic payments for it. Defendants said the Plaintiff was in breach of their sale agreement. Defendants however did not state how this breach came about.

As stated above, the Defendants after the inception of the case in court paid the amount of 20,000 leaving the issue of interest (50 % of the interest at prevailing commercial bank rate 23 months) calculated at GH¢4,981 and costs of GH¢4,000.

ISSUE FOR DETERMINATION AND EVIDENCE LED

The court from the above facts notes that the main issue for trial is

1. Whether or not the Plaintiff is entitled to the payment of interest on the principal sum of 20,000.00 paid by the Defendants and costs

The court will proceed to look at the written submission of the Plaintiff in consideration of the issue at stake.

WRITTEN SUBMISSIONS

In her written submission in support of Plaintiff's case, learned counsel for Plaintiff restated both the parties' cases. Counsel referred to **CI 52 which is the Award of Interest and Post Judgment Interest Rules 2005 rules 1, 2, 3 and 4 and I quote:**

Rule 1- Order for the payment of Interest that:

1. 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 and
 - b. At simple interest
 - c. But where an enactment, instrument or agreement between the parties specifies a rate of interest which is to be calculated in a particular manner the court shall award that rate of interest calculated in that manner

Rule 2- Post Judgment Interest

2. (1) Subject to sub rule (2) each judgment debt shall bear interest at the statutory interest rate from the date of delivery of the Judgment up to the date of final payment.
 - (2) Where the transaction which results in the judgment debt is contained in the agreement, evidence in writing, admitted by the Parties and the parties specify in the instrument, writing and

admission the rate of interest which is chargeable on the debt and which is to run to the date of final payment, then that rate of interest shall be payable until the final payment.

Rule 3- Enforcement of Interest payment

3. Interest payable under these rules may be levied under a writ of execution.

Rule 4 – Interpretation of Statutory Rate

4. (1) In these Rules, statutory rate of interest is the bank rate prevailing at the time the judgment or order is made by the court
- (2) Where there is a doubt as to the prevailing bank rate, 91 days Treasury Bill rate as determined by the Bank of Ghana shall be the prevailing bank rate.

Counsel pointed to the case of **Da Costa v. Ofori Transport Ltd** (2007-2008) 1 SCGLR 602 in respect of the first sub rule where the Supreme Court awarded interest on damages as the Judgment debt up to the date of Judgment and further awarded interest on the Judgment debt at the post judgment statutory interest rate under rule 2(1) of CI 52

Counsel again referred to His Lordship S A Brobbey in his book **Trial Courts and Tribunals of Ghana** at page 414 paragraph 946 which stated that the court must first and foremost determine the sum owed by the judgment debtor to the judgment creditor because it is on this sum that interest is payable. The Court will determine that sum only after the trial and in the ensuing judgment, meaning in other words that the provisions of CI 52 are applicable strictly to only interest on judgment debts. At paragraph 964 the learned author went on to state that the sum due is determinable from what was agreed upon by the parties or what the judgment creditor originally claimed and was able to establish in the court.

In **Smith v. Blankson** (2007-2008) SCGLR 374 at holding 3 it is stated that 'Even though from a study of the record of appeal, the Plaintiffs-appellants did not make any claim for an award of interest on the amount which was to be refunded by the defendant-respondent did not immediately refund the money after the receipt of the request for

refund, interest must be paid on the amount due at the prevailing commercial bank rate of interest from the date of judgment until final payment.

Counsel finally submitted that at page 418 of the book afore-mentioned by His Lordship S A Brobbey under the sub title **Period for Paying Interest** it is stated that the period when payment of interest is to commence is usually determined from the contract between the parties or as it is stipulated by statute and that the 1st Defendant though he sought to dodge the other conditions placed on them as Defendants, admitted that they agreed to pay the sum of GH¢ 20 000 to the Plaintiff which is the principle sum owed to the Plaintiff.

This sum according to Counsel was only paid after the Plaintiff had gone to considerable heights in securing the services of a debt collector; Plaintiff's Attorney, but also hiring a private detective to seek out the Defendants from their hideouts which matter was not denied and also payment of court processes to attain the appearance of the Defendants who had chosen when to appear before the court after being served with numerous court processes.

Learned Counsel concluded that the Plaintiff is worthy to have all his reliefs granted and given interest on the sums paid at the prevailing commercial rate from January 2019 till date of final payment and cost including his legal cost.

ANALYSIS

This being a civil case, Plaintiff must prove its case on a balance or the preponderance of the probabilities. In civil cases the general rule is that he who asserts must prove. The general rule again is that the party who in his pleadings raises issues essential to the success of his claim carries the burden of proof.

Section 12(2) of the Evidence Act, NRCD 323 defines proof on the preponderance of the probabilities to be *'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 Majolagbe v Larbi & Ors (1959) GLR 190 it was held

'Proof in law is the establishment of facts by proper legal means, Where a party makes an averment capable of proof in some positive way e.g by producing documents, description of things, reference to other facts, instances or circumstances, and his averments is denied, he does not prove it by merely going into the witness box and repeating that averment on oath, or having it repeated on oath by his witness. He proves it by producing other evidence of facts and circumstances, from which the Court can be satisfied that what he avers is true

The primary issue for determination before this Honourable Court is whether or not the Plaintiff is entitled to interest on the principal sum of GH¢20,000.00 and costs.

On the 15th of December 2020 towards a peaceful settlement of the matter the Plaintiff's attorney met with 1st defendant and their representative and accepted payment of the principal sum of GH¢20,000.00. Plaintiff wrote a letter to acknowledge the payment EXB D, and proposed that the Plaintiff was going to accept the interest payment of 50% of the principal sum at the prevailing commercial Bank Rate of 26% for 23 months calculated at GH¢ 4,981.00 due at the time and cost of GH¢4,000.00. The total amount payable by the Defendants per the computation stood at GH¢ 8,981.50 pesewas.

On the 20th of April 2022, during trial the Defendants did not object to the content of Exh. 'D' when the Plaintiff tendered it in evidence.

The following answers were given by the 1st defendant on behalf of himself and the 2nd defendant under cross-examination.

- Q. At the time your lawyer and you went to Plaintiff's attorney there was an agreement you will pay half as interest rate stated on the writ.**
- A. Not so we agree we pay GH¢20,000.00**
- Q. Suggestion – Plaintiff said he would prefer to pay GH¢20,000 for sleeping Defendants to lie. At the meeting it was brought to your**

notice Plaintiff has incurred costs in mounting this action against you.

A. I paid Surveyor costs, I paid indentures. Plaintiff said I should bear any costs whilst I pay the GH¢20,000.00

Q. You are not truthful.

A. look at Paragraph 13 of the Witness statement of the Plaintiff revealed the following:

Paragraph 13 "After the Defendants pleaded severally for a reduction of the interest it was decided that they should pay half of the interest at the time of full payment of the principal. The Plaintiff would have been willing to pay 50% of the interest which would have brought matters to an end but since December 2020, when the last sum was paid the Defendants then unlawfully decided that their debt had been paid off and have refused to pay for the reliefs sought by the Plaintiff in his statement of claim.

Before I proceed to apply the law, I have noted that Although the testimony of the Defendants suggest that they did not agree to the payment of 50% interest on the principal sum, they never rebutted the letter from Plaintiff's attorney suggesting the payment evidenced by EXH 'D'. As rightly stated by counsel for the Plaintiff in her submission the Defendants never raised an objection to the said Exh. 'D' during trial.

Court notes for the 17th of June 2023 stated that the Defendants should be present in court for determination of interests and risk forfeiting the opportunity to be heard on the interest to be calculated.

The court differently constituted instructed the Plaintiff to serve hearing notices on the Defendants who failed to show up.

It is quite clear that the Defendants have decided that after paying the principle sum they will ignore the rest of the reliefs sought by the Plaintiff by refusing to come to court though successfully served.

THE LAW

C.I. 52 Rule 1- Order for the payment of Interest previously mentioned states that

1. 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
 - c. But where an enactment, instrument or agreement between the parties specifies a rate of interest which is to be calculated in a particular manner the court shall award that rate of interest calculated in that manner.

His Lordship S A Brobbey in his book **Practise and Procedure in the Trial Courts and Tribunals of Ghana 2nd Edition** at page 418 Para 953 state that Barring any express agreement by the parties, interest will, as already noted, ordinarily be payable from the day the principal became due for payment but was not paid in part or not paid at all, That can be interpreted as the date for the accrual of the cause of action. In **Dacosta v. Ofori Transport Ltd** [2007-2008] 1 SCGLR 602 Holding (4) of that case reads, inter alia, that

... in accordance with rule 1 of the Court (Award of Interest and Post Judgment Interest) Rules, 2005 (CI 52), the damages awarded are to bear interest at the prevailing bank rate from the date of the accrual of the cause of action, ie from 1 January 1982 till the date of judgment, ie 18 June 2008.

As was noted from EXH D, the Defendants in this case paid the principle sum of GH¢ 20 000 to the Plaintiff on the 15th of December 2020 though the action commenced against them by the Plaintiff was filed in December 2019.

Per the contents of Ex D the Plaintiff unilaterally agreed that the Defendants pay 50% of the principal sum as interest at the prevailing bank rate of 26% for 23 months due at the time and costs of GH¢4,000.00

DECISION

Based on the evidence led and the foregoing analysis, I find that the Plaintiff has led evidence to upset the balance of probabilities in his favour.

The issue that Plaintiff is entitled to interest was not challenged by the Defendants who rather chose to go to sleep after the payment of the principal sum owed to the Plaintiff (evidenced by Exhibit D)

Since interest is exigible or payable on monies of a party unfairly detained and Defendants since the inception of the case failed to pay the principle sum claimed by the Plaintiff, the latter are rightly entitled to the payment of the interest owed per Plaintiff's letter (Exh. 'D') and C.I.52 rule 1.

Consequently, this means that the Plaintiff has been able to prove its case on a balance of probabilities.

BY COURT: The court makes an order for the award of interest per Rule 1 (Award of Interest and Post Judgment Interest) Rules 2005 CI 52.

That the Defendants pay

1. 50% Interest on the principal sum of GH¢ 20,000 at the prevailing bank rate of 26% from the period 20th January 2019 to December 2020 at simple interest rate for 23 months due at the time.
2. The court further makes an order for the award of costs of GH¢6,000.00 to the Plaintiff representing GH¢4,000.00 general costs and GH¢2,000.00 as cost of litigation.

Plaintiff is to serve the Entry of Judgment on the Defendants.

SARA KUSI COUNSEL FOR THE PLAINTIFF PRESENT

ROBERT QUARTEY ESQ. FOR THE DEFENDANTS ABSENT

(SGD)

H/H KIZITA NAA KOOWA QUARSHIE

CIRCUIT COURT JUDGE

