

IN THE CIRCUIT COURT HELD AT KWABENYA ON FRIDAY THE 24TH
DAY OF NOVEMBER, 2023 BEFORE HER HONOUR MAWUSI
BEDJRAH, CIRCUIT JUDGE

CASE NO. A2/16/2022

ASEDAPA MICRO CREDIT SERVICES

PLAINTIFF

VRS

SAPEY GIDEON & 2 OTHERS

DEFENDANTS

PLAINTIFF REPRESENTED BY ALEX BAWA

PRESENT

1ST & 3RD DEFENDANTS

ABSENT

2ND DEFENDANT

PRESENT

OPOKU AMPONSAH FOR PLAINTIFF

PRESENT

EMMANUEL WILSON HOLDING THE BRIEF OF

K. AMOAKO ADJEI FOR 2ND DEFENDANT

PRESENT

JUDGMENT

Plaintiff, per the writ of summons and statement of claim filed on 11th March 2022, claims against defendants the following;

- i. A declaration that the 1st defendant has defaulted in repayment of the loan facility of GH¢50,000 he obtained from the plaintiff
- ii. A declaration that the 2nd and 3rd defendants are jointly and severally liable with the 1st defendant for repayment of the loan facility
- iii. An order for recovery of the principal sum of GH¢50,000 from the 1st, 2nd and 3rd defendants jointly and severally
- iv. An order for recovery of interest in the sum of 4.5% per month on the principal sum of GH¢50,000.00 jointly and severally from the 1st, 2nd and 3rd defendants calculated from 30th May, 2021 to date of final judgment
- v. An order for recovery of default penalty of 0.05% on the outstanding loan facility on daily basis calculated from 1st July 2021 to date of final judgment
- vi. General damages for breach of contract
- vii. Any other reliefs the Honourable Court may deem fit

2nd defendant entered appearance on 17th March 2022 per the notice filed by his lawyer and subsequently changed representation by a ‘Notice of Change of Representation’ on 30th March 2022. 2nd defendant also filed his defence and counterclaim on 30th March 2022. 2nd defendant, per his defence and counterclaim, denies the assertions of plaintiff and counterclaims as follows;

- i. General damages for unlawful arrest
- ii. Cost

Plaintiff in his reply to the statement of defence and counterclaim, filed on 25th April, 2022, denies 2nd defendant’s allegations and states that 2nd defendant is not entitled to his counterclaim.

3rd defendant entered appearance but failed to file a defence, based on which judgment in default of defence was obtained against him.

Plaintiff later served the 1st defendant with the writ of summons and statement of claim by substituted service, having conducted a search which confirmed that he had not been served with the processes. Irrespective of this, 1st defendant failed to take any steps in the matter, resulting in the taking of judgment in default of appearance against him.

PLAINTIFF’S CASE

Plaintiff is a registered and licensed entity under the laws of Ghana providing micro credit services to small and medium scale enterprises in Ghana. On or around April 2021, the 1st defendant, a security man with Meditab Pharmacy Limited and the owner of a trading outlet known as Build Early Ventures, applied for a loan facility of Fifty Thousand Cedis (GH¢50,000.00) from the plaintiff for the fixed duration of eight months at a negotiated interest rate of 4.5% a month. In pursuance of this loan, the 1st defendant executed a loan agreement which required him to pay a fixed sum of GH¢8,500.00 on monthly basis for the tenure of the facility. That in the event of default, a penalty charge of 0.05% shall be charged on the outstanding arrears accruing on daily basis till the loan is fully repaid. Per a letter dated 22nd April, 2021,

2nd defendant purported to be an Accountant at Meditab Pharmacy Limited and issued a guarantee on behalf of the pharmacy in respect of repayment of the loan facility, in the event of default by 1st defendant and confirmed writing the letter.

According to plaintiff, 1st defendant honoured his re-payment obligations for the first two months and has since defaulted, notwithstanding demands on him to repay same. Plaintiff then called 2nd defendant, who pleaded for time to settle the debt but to no avail. It has subsequently come to the attention of the plaintiff that the 2nd defendant is not an employee of Meditab Pharmacy Limited, much more an Accountant at the said pharmaceutical distribution outlet and that for all intents and purposes, the guarantee executed by 2nd defendant on the letterhead of 1st defendant was falsely orchestrated to aid the 1st defendant to obtain the loan facility. It is plaintiff's case that 2nd and 3rd defendants are jointly and severally liable with the 1st defendant for the repayment of the loan facility and that the denial of 2nd defendant as being the author of the guarantee is an afterthought since he had previously engaged the plaintiff's officer in charge of the transaction and admitted that he wrote and signed the guarantee to help the 1st defendant to secure the facility and further pleaded for time to settle the debt.

Plaintiff, in its reply to the 2nd defendant's statement of defence, reiterates that Madam Charlotte from the plaintiff company called the 2nd defendant to enquire whether he works with Meditab Pharmacy Ltd, to which he answered in the affirmative. Further, 2nd defendant confirmed that the 1st defendant is an employee of Meditab Pharmacy Ltd and that he wrote the letter of guarantee to support the 1st defendant to secure the loan. He assured the said Madam Charlotte that in the event of default, he would personally ensure repayment of the debt to the plaintiff out of an amount he had earmarked for the repayment. That the 2nd defendant admitted liability when informed of the 1st defendant's default and has since engaged in recorded telephone discussions with the plaintiff's representative to express his regret in providing the fictitious guarantee to support the 1st defendant, as he trusted that the 1st defendant would honour his payment obligations to the plaintiff. Also, plaintiff states that 2nd defendant, whose name appears on the guarantee letter, was not arrested but was invited by the police to assist in investigations.

2ND DEFENDANT'S CASE

2nd defendant on the other hand denies the allegations and states that he only knows 1st defendant as a contract labourer of his company, Farmland Plan Focus and that he, i.e. the 1st defendant, has nothing to do with Meditab Pharmacy Limited, even if it exists. The 2nd defendant states that he is into real estate business, dealing mainly in the sale and leasing of farmlands and that at no time has he purported to work or represented himself as a worker for Meditab Pharmacy Limited. 2nd defendant denies ever writing any letter of introduction or guarantee for the 1st defendant to the plaintiff or anyone at all. 2nd defendant reiterates that he has absolutely no knowledge of any letter from Meditab Pharmacy Limited and states that as far as he recalls, a lady called Charlotte called him once and enquired if he knew the 1st defendant, who had applied for loan from her outfit. The 2nd defendant responded that he knew him as his casual labourer but nothing was said about any letter from Meditab Pharmacy Limited or any other company or his position thereat. The 2nd defendant states that it was only when he was first contacted by the plaintiff on the alleged letter that he confronted the 1st defendant who confessed that the letter from Meditab Pharmacy Limited was actually authored by one Alex, a worker of the plaintiff company to help the 1st defendant's application for the loan facility. The 2nd defendant therefore denies any complicity in the procurement of the letter from Meditab Pharmacy Limited. 2nd defendant shall contend that any such letter, if indeed it is authentic, will only bind the so-called Meditab Pharmacy Limited and its officers. 2nd defendant shall further contend that he has not signed any contract, guarantee form nor provided his bio data in any form to the plaintiff to entitle the plaintiff to bind him with the alleged liabilities of the 1st defendant. According to 2nd defendant, plaintiff needlessly caused his arrest by the Kwabenya police on an allegation of fraud and for which he had to spend time and money reporting at the police station, at least three times. It is upon his presentation of the facts, among others, that the police declined to prosecute him.

ISSUES FOR DETERMINATION

The issues for determination as adopted by the court, based on the issues filed by plaintiff and additional issues filed by 2nd defendant are as follows:

- i. Whether or not the 2nd defendant issued a letter to the plaintiff to guarantee the loan facility from the plaintiff to the 1st defendant?

- ii. Whether or not prior to the disbursement of the loan facility the 2nd defendant confirmed to the plaintiff that he (2nd defendant) issued the letter of guarantee?
- iii. Whether or not in a recorded discussion with an officer of the plaintiff after default by the 1st defendant, the 2nd defendant expressed regret in issuing the letter to guarantee the loan facility for the 1st defendant?
- iv. Whether or not the 2nd defendant pleaded for time with the plaintiff to settle the loan facility following default in repayment by the 1st defendant?
- v. Whether or not the 2nd defendant confirmed to the plaintiff that he (2nd defendant) is an Accountant with Meditab Pharmacy Limited?
- vi. Any other issue arising from the pleadings
- vii. Whether or not the plaintiff has been negligent in its dealing with the 1st defendant and wants to cajole the 2nd defendant to pay the debt he has no knowledge of?
- viii. Whether or not the 2nd defendant can be fixed with the liability of the 1st defendant in the circumstances of this case?
- ix. Whether or not the plaintiff caused the 2nd defendant's arrest?
- x. Whether or not the 2nd defendant's arrest was justified?

BURDEN OF PROOF

Section 10 (1) of the Evidence Act, 1975, (Act 323) provides the burden of persuasion as “...*the obligation of a party to establish a requisite degree of belief concerning a fact in the mind of the tribunal of fact or the court.*” Section 11 (1) further defines the burden of producing evidence as “...*the obligation of a party to introduce sufficient evidence to avoid a ruling against him on the issue.*”

Further, per Section 14 of Act 323, “*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*”.

Thus, the basic principle in the law of evidence is that the burden of persuasion on proving all facts essential to any claim lies on whosoever is making the claim. This has been the guiding principle in deciding civil cases, a case to this effect being **EFFISAH V ANSAH** [2005-2006] SCGLR 943.

In this regard, per the claims of plaintiff and 2nd defendant, they, on their respective parts, have a burden to discharge to adduce sufficient evidence on the issues raised to avoid a ruling against them. The standard of the burden is one of preponderance of probabilities, as provided in Sections 11(4) and 12 of Act 323. (See **BISI & OTHERS V TABIRI ALIAS ASARE** [1987-1988] 1 GLR 360 at page 361).

EVIDENCE ADDUCED

EVIDENCE OF PLAINTIFF

Plaintiff called two witnesses to testify in the matter. Plaintiff's first witness, Alex Bawa, is a loans officer with the plaintiff. His evidence was basically an expansion of plaintiff's statement of claim, whereby he elaborated on how the letter of guarantee was executed. He tendered the following documents in evidence;

- i. A copy of the loan application form executed by the 1st defendant for the facility-Exhibit AMCS 1
- ii. A copy of the guarantee executed by the 3rd defendant-Exhibit AMCS 2
- iii. A copy of the guarantee from Meditab Pharmacy Limited brought by 1st defendant and signed by the 2nd defendant to guarantee repayment of the facility in the event of default by 1st defendant-Exhibit AMCS 3

Charlotte Mettle, PW2, is an Executive Director of Plaintiff Company, whose evidence is a further elaboration of that of PW1, and is particularly in respect of the letter of guarantee. She tendered evidence of registration and licensing of plaintiff entity-Exhibit AMCS series.

EVIDENCE OF 2ND DEFENDANT

2nd defendant testified by himself and did not call any additional witness. He stated, among others, that he does not know and never had any encounter with the plaintiff, until officers of the plaintiff got him arrested and proceeded with the instant suit. All the other evidence was to further elaborate his statement of defence. 2nd defendant tendered the following documents in evidence;

- i. A copy of the statement he made to the police upon his arrest-Exhibit SO1
- ii. Final Demand Notice demanding for the payment of an alleged debt of 1st defendant's loan-Exhibit SO2
- iii. Response by 2nd defendant's lawyers to the Final Demand Notice-Exhibit SO3
- iv. Petition by 2nd defendant to the crime officer to request for other letters and documents the plaintiff claimed to have received from him-Exhibit SO4

- v. A copy of the said Meditab letter –Exhibit SO5

Upon completion of hearing, Counsel for plaintiff filed his written address on 18-08-2023, whilst Counsel for 2nd defendant filed his on 21-08-2023. Counsel for Plaintiff was given another opportunity to file a supplementary written address in response to the challenge to Plaintiff’s capacity to institute the suit, which was filed on 7th November, 2023. All three written addresses have been considered in this judgment.

ASSESSMENT OF THE EVIDENCE AND THE LAW

The preliminary issue to be determined by this court is the capacity of Plaintiff to institute this action. According to Counsel for 2nd defendant, plaintiff does not have the capacity to institute this action because the writ was issued in the name of Asedapa Micro Credit Services, where PW2 describes herself as the Executive Director of the company. Meanwhile, the exhibits attached to PW2’s witness statement portray plaintiff as a sole proprietorship, owned by PW2.

“The law is trite that capacity is a fundamental and crucial matter that affects the very root of a suit and for that matter, it can be raised at any time even after judgment on appeal. The issue is so fundamental that when it is raised at an early stage of the proceedings a court mindful of doing justice ought to determine that issue before further proceedings are taken to determine the merits of the case. Thus, a plaintiff whose capacity is challenged needs to adduce credible evidence at the earliest opportunity to satisfy the court that it had the requisite capacity to invoke the jurisdiction of the court. If this is not done, the entire proceedings founded on an action by a plaintiff without capacity would be nullified should the fact of non-capacity be proved.” **NII KPOBI TETTEY TSURU III, SFA LIMITED AND FODAS ESTATES LTD vs. AGRIC CATTLE, SANTEO MANTSE, KATAMANSO MANTSE, NII ODAIFIO WELENTSE AND LAKESIDE ESTATES LTD** [2020]DLSC 8742

The issue of capacity was not raised during the early stages of the proceedings. Neither was it raised as one of the issues for trial. This notwithstanding, the court needs to address it since it came up succinctly during trial and has been raised at the addresses stage.

I have noted that Exhibit ‘A’ of AMCS series is the Certificate of Registration that certifies that Asedapa Micro Credit Enterprise was originally called Asedapa Micro Credit Service. It further provides that the name was changed on 1st December, 2020 and that Asedapa Micro Credit Enterprise was registered under the Registration of Business Names Act on 12th July, 2019. Exhibit A3 shows PW2 as the owner of the enterprise and per Exhibit A4, Asedapa Micro Credit Enterprise is licensed to operate as a micro-credit enterprise for one year, ending 31st July, 2023. Per paragraph 1 of Plaintiff’s statement of claim, Asedapa Micro Credit Services is a registered and licensed entity under the laws of Ghana providing micro credit services to small and medium scale enterprises in Ghana. At the institution of this action, Asedapa Micro Credit Enterprise had been licensed to operate in Ghana but plaintiff chose to initiate the suit under its ‘former name’. It is worth noting that plaintiff’s Exhibit AMCS 1, which is a Customer Loan Application Form, is in the name of Asedapa Micro Credit Services. I have also noted that the main persons involved in the transaction on behalf of the plaintiff under the old name are the same persons working under the sole proprietorship. With this background information, I am guided by the statement of Dotse JSC (Rtd) in **OBENG V ASSEMBLIES OF GOD CHURCH, GHANA** [2010] SCGLR 300 at 325 as follows;

“In this Court, we take the view that since the Courts exist to do substantial justice, it will be manifestly unjust to non-suit the plaintiffs because they added “Executive Presbytery” to their names on the writ of summons. Courts must strive to prevent and avoid ambush litigation, by resorting and looking more at the substance than at the form.”

I am also guided by Holding 1 in the Court of Appeal decision in **MUSSEY V DARKO** [1977] 1 GLR 147, where it was held that;

“A court could treat as a mere misnomer and grant an application to have the title to a writ amended where a sole proprietor of a business mistakenly sues in the firm’s name, and later gave a reasonable explanation for his mistake.”

Based on the above and irrespective of the fact that no such application has been made in this case, I have chosen to treat the institution of the suit in the name of Asedapa Micro Credit Services as a mere misnomer. I now proceed to discuss the issues raised at the trial on the basis that plaintiff had the capacity to institute this action.

(i) Whether or not the 2nd defendant issued a letter to the plaintiff to guarantee the loan facility from the plaintiff to the 1st defendant?

The letter in question is dated 22nd April, 2021 and is on the letterhead of Meditab Pharmacy Ltd. The letter was tendered in evidence by plaintiff as Exhibit AMCS 3 and equally tendered by 2nd defendant as Exhibit SO5. It is headed “A LETTER TO GUARANTEE FOR A LOAN” and it is signed by one Mr. Stephen Okuampah as the Accountant of Meditab Pharmacy Ltd. Plaintiff’s case is that the 2nd defendant is the author of the letter and issued the letter to guarantee repayment of the loan facility in the event of default by the 1st defendant. 2nd defendant’s case on the other hand is that he never authored any such letter and thus, cannot be made responsible for the loan repayment. The letter has 2nd defendant’s name and a signature said to be his. Having denied the authorship of same, it is for plaintiff to prove, on a balance of probabilities, that the letter was written and signed by 2nd defendant on behalf of Meditab Pharmacy Ltd. It may be helpful to refer to part of the cross-examination of plaintiff’s first witness in this regard as follows;

“Q: You indicated to this court that you are holding the 2nd defendant liable because of the supposed letter from Meditab Pharmacy. Is that not so?

A: That is so my Lady.

Q: And you equally agree with me that in your writ of summons and statement of claim, Meditab Pharmacy is not a party to the suit?

A: Yes my Lady. We noted that Meditab is not part of this because 2nd defendant told me personally that he did not write that letter. That was after the loan has gone into default and we started chasing him for it.

Q: You see, what you just said confirms his claim that he never wrote that letter and he has nothing to do with the Meditab Pharmacy.”

A: My Lady, I do not agree with him...”

Plaintiff, having been severally informed by 2nd defendant that he neither wrote nor signed the letter, did not produce any additional evidence to substantiate its claim. For instance, plaintiff, under cross-examination, informed the court that they had a telephone conversation with 2nd defendant before the loan was issued and he confirmed that he wrote the letter. This is not in evidence. Meanwhile, 2nd defendant tendered Exhibit S01 to prove his claim, in which he denied among others, knowledge of the letter and that the signature on the letter is not his. His denial is reiterated in Exhibits S03 and S04.

Issues (ii), (iii), (iv) and (v)

I have also noted that the second to fourth issues basically seek to attain the same objective as the first issue and would thus deliberate on them under the first issue already under discussion.

As to whether or not prior to the disbursement of the loan facility, the 2nd defendant confirmed to the plaintiff that he (2nd defendant) issued the letter of guarantee, whether or not in a recorded discussion with an officer of the plaintiff after default by the 1st defendant, the 2nd defendant expressed regret in issuing the letter to guarantee the loan facility for the 1st defendant, whether or not the 2nd defendant pleaded for time with the plaintiff to settle the loan facility following default in repayment by the 1st defendant and whether or not the 2nd defendant confirmed to the plaintiff that he (2nd defendant) is an Accountant with Meditab Pharmacy Limited, all have to be proven by plaintiff, particularly when 2nd defendant has denied same. Plaintiff, beyond making these claims in its pleadings, did not provide any evidence to this effect.

For instance, plaintiff did not tender any recorded discussion involving 2nd defendant and an officer of plaintiff. The lengthy answer in response to the question; “You see, what you just said confirms his claim that he never wrote that letter and he has nothing to do with the Meditab Pharmacy.” could have been appropriately dealt with if the said conversation had been exhibited in any form to the court, as portrayed under cross-examination as follows;

“Q: You see, this said conversation between your Director and 2nd defendant has not been exhibited in the form of audio or any other form?”

A: No my Lady

Q: And equally, your company did not invite him to undertake to pay the rest of the loan?”

A: My Lady, on the phone conversation, he pleaded for time and said that he would liaise with me and we were doing that.”

In effect, the assertion that 2nd defendant made further commitment to repay the loan was made by plaintiff and thus, needed to be proved by plaintiff. I therefore disagree with Counsel for plaintiff that this piece of vital evidence was not challenged. In fact, this assertion flows from the main issue at stake, being the author of the said letter, which is to be proven by plaintiff. The principle as enunciated in **MAJOLAGBE V LARBI & ORS** [1959] GLR 190-195 and as aptly reproduced by Counsel for plaintiff is that;

“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 averment 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.”

Issues (vii) and (viii)

Whether or not the plaintiff has been negligent in its dealing with the 1st defendant and wants to cajole the 2nd defendant to pay the debt he has no knowledge of and whether or not the 2nd defendant can be fixed with the liability of the 1st defendant in the circumstances of this case

I have decided to discuss these issues together, in view of their similarity. I have noted the concern raised by Counsel for plaintiff that 2nd defendant did not plead negligence, much more particularise same in his statement of defence. However, I note that paragraphs 22- 24 of 2nd defendant’s statement of defence make reference to negligence on the part of plaintiff as well as his witness statement. Thus, I find it expedient to address same.

Plaintiff’s evidence is that they demanded that the 1st defendant provided two guarantors for the facility, one of which must be his employer and in the form of a letter of guarantee, thus Exhibit AMCS 3. It may be helpful to consider some aspects of the cross-examination of PW1 as follows;

Q: Is the 2nd defendant the same person that you usually contact when the 1st defendant is coming for a loan?

A: To the best of my knowledge, he is not the one.

Q: Kindly assist the Court with the definition of risk in your industry.

A: My Lady, when we say a risk, it is something which is unknown, whether it would be successful or not.

Q: So you agree with me that the meaning of high risk is that the applicant is likely not to pay the loan?

A: My Lady, yes I agree

Q: You equally agree with me that the meaning of high risk is that the applicant is likely not to pay the loan? ...

Q: In all this, you still rated the 1st defendant as a low risk customer. Is that what you want the Court to believe? (Exhibit AMCS 1)

A: My Lady, we rated him low risk because he used the same means to secure a loan from us and it was successfully paid.”

It is also worthy to note that PW2 confirmed under cross-examination that although 1st defendant had taken two previous loans from the plaintiff, 2nd defendant was not part of his previous guarantors. Interestingly, under further cross-examination, PW2 told the court that whilst in Legend, they had previously received letters, one of which bore 2nd defendant's name. I find these two statements contradictory, which in a way, discredit the testimony of PW2. Also, I am at a loss as to how the authenticity of a letter can be established by just calling the individual to confirm same, without taking any further steps to safeguard this and to be told that it is a normal practice, particularly when, according to PW2, the company made an error in waiving the requirement for a letter from employer.

According to plaintiff, 2nd defendant had assured them on phone that he worked with Meditab Pharmacy, had written the letter of guarantee to support the 1st defendant to secure the loan and that in the event of default, he would personally ensure repayment of the debt to the plaintiff.

Per Exhibit AMCS 2, the loan was guaranteed by Richmond Fiadzinu, 3rd defendant, who promised to repay the loan in case of default and signed a Guarantor Loan Indemnity to that effect. Further, even if 2nd defendant was the author of the letter, which plaintiff has not been able to prove, the author of the letter only states that; “I will make sure that he will pay the loan on time, and if he fails to pay the loan to Asedapa Micro Credit Services, the company which is Meditab Pharmacy will pay on his behalf.”

I find that the plaintiff has been negligent in its dealing with the 1st defendant and wants to cajole the 2nd defendant to pay the debt he has no knowledge of. Thus, 2nd defendant cannot be fixed with the liability of the 1st defendant in the circumstances of this case.

Issues IX and X

Whether or not the plaintiff caused the 2nd defendant's arrest and whether or not the 2nd defendant's arrest was justified?

2nd defendant's case is that plaintiff unjustifiably caused his arrest and thus his counterclaim for general damages for unlawful arrest. I wish to consider an aspect of the cross-examination of 2nd defendant as follows;

“Q: Indeed the police explained to you that they were investigating the authenticity of Exhibit ‘SO5’, which has your name on it as the author and for which reason, you are a suspect.

A: Yes my Lady. Investigation into my arrest.”

According to 2nd defendant, he was arrested when they went to the police station and after his statement to the police and interaction among himself, his lawyer, the police and representatives of plaintiff, they all left the police station.

An invitation by the police does not constitute arrest, particularly in a case like this one, where there was the need to ascertain the writer of the letter. 2nd defendant has not been able to establish that his rights were wrongly trampled upon. I find that plaintiff did not cause the 2nd defendant's arrest. Even if he did, which 2nd defendant has not been able to prove, the arrest would be justified in the circumstance.

DECISION

On the totality of the evidence, I hold that the 1st defendant, having defaulted in repayment of the loan facility of GH¢50,000 he obtained from plaintiff, is liable for repayment of the loan, jointly and severally with 3rd Defendant, as earlier ordered by the court. Thus, 2nd defendant is not liable in any way whatsoever for the repayment of the loan. In effect, the reliefs claimed by plaintiffs against 2nd defendant are denied. I also find that 2nd defendant is not entitled to his counterclaim for damages for unlawful arrest.

Having listened to the arguments by Counsels for the parties in respect of cost, a nominal cost of GH¢3000.00 is awarded in favour of 2nd defendant against plaintiff.

Her Honour Mawusi Bedjrah
Circuit Judge