

IN THE CIRCUIT COURT HELD IN KUMASI ON FRIDAY THE 10TH DAY OF
MARCH, 2023 BEFORE HER LADYSHIP JUSTICE PRISCILLA DAPAAH MIREKU
(MRS.), SITTING AS ADDITIONAL CIRCUIT COURT JUDGE.

SUIT NO. A2/52/2021

JOSEPH OBENG AYIM
TRADING UNDER THE NAME
AND STYLE SANITAS MEDICAL SUPPLIESA

CHARLES HAGAN

JUDGMENT

The summary of the plaintiff's case is that the defendant and he entered into an agreement sometime 2020 for the supply of KN 95 face mask. According to the plaintiff he supplied six thousand and two hundred (6,200) pieces of KN 95 face masks to the defendant at a price of Nine Cedis (GH¢9.00) each, totaling Fifty Five Thousand Eight Hundred Ghana Cedis (GH¢55,800.00) which the defendant was to pay same upon delivery. That after delivery, the defendant failed to make payment and sometime July, 2020 the defendant issued him a postdated cheque to him worth Twenty Thousand

Cedis (GH¢20,000.00) which same was dishonored. The plaintiff further avers that one Yvonne Quayson who introduce the defendant to him had an order for the supply of KN 95 face mask so two thousand five hundred and twenty (2,520) pieces of the face mask supplied to the defendant were given to her leaving a total of three thousand, six hundred and eighty (3,680) pieces with the defendant amounting to Thirty Three Thousand, One Hundred and Twenty Cedis (GH¢33,120.00) outstanding for the defendant to pay same. That all attempts to get the defendant to pay same have proven futile and thus the plaintiff prays for the following;

- a. An order for the recovery of the sum of Thirty Three Thousand, One Hundred and Twenty Ghana Cedis (GH¢33,120.00) owed by the Defendant to the Plaintiff.
- b. Interest on the sum of Thirty Three Thousand, One Hundred and Twenty Ghana Cedis (GH¢33,120.00) from 29th June, 2020 till date of final payment.
- c. Cost including legal fees.

The defendant denies the plaintiff claim and avers that it was rathe Yvonne Quayson who agreed to supply him with sample of KN 95 face mask after he had informed Mrs. Quayson that he was looking for FFP2 face mask and she claimed KN95 face mask was equally good. That, it was Mrs. Quayson who brought the KN95 face mask to his shop and when he showed same to his customers they refused to accept same so he asked Mrs. Quayson to come for the KN95 face masks.

According to the defendant, when Mrs. Quayson was delivering the face masks, she came with the Plaintiff and later informed him that it was the defendant who supplied her with the KN95 face masks. That Mrs. Quayson told him that the plaintiff will come for the goods as he was the one who supplied the goods to her and the plaintiff came for 1/3 of the goods promising to come for the rest later.

The defendant avers that the GH¢20,000.00 postdated cheque he issued to the plaintiff was for the supply of face shield he discussed with him but upon receipt of the said cheque, the plaintiff indicated that he could not supply the face shield again so he directed his bankers not to honour the said cheque. The defendant claims he is not indebted to the plaintiff as he has not bought anything from him thus, the plaintiff is not entitled to the reliefs he is praying for.

The issues set down for trial are;

1. Whether or not there was a contract between the parties for the sale of KN95 face masks?
2. Whether or not the Defendant is in breach of contract with the plaintiff?
3. Whether or not the Defendant lawfully rejected the KN95 facemasks supplied to him by the Plaintiff.
4. Whether or not the plaintiff is entitled to his claim?
5. Any other issues arising out of the pleadings.

The onus of proof on a party in a civil suit is preponderance of probabilities. In the case of **Zambrama vs. Segbezi [1991] 2 GLR 221 @ 246** it was held that,

A person who makes an averment or assertion, which is denied by his opponent, has a burden to establish that his averment or assertion is true. And he does not discharge this burden from which the fact or facts he asserted can properly and safely be inferred. The nature of each averment or assertion determines the degree and nature of the burden.

Also in the case of **In Re Wa Na; Issah Bukari (substituted by Mahama Bukari & Anor v. Mahama Byong & Others [2013-2014] SCGLR**, the Supreme Court stated that,

The Evidence Act, 1975 (NRCD 323), has prescribed the applicable procedure in every proceedings including inquiries, investigations and hearings, etc thus a person was obliged under section 11 of NRCD 323 to introduce sufficient evidence to avoid a ruling against him on an issue.

The onus is first on the plaintiff and it is after he proves his case that the evidently burden will move to the defendant.

The plaintiff alleges that he had a contract with the defendant for the supply of KN95 face mask while the defendant alleges that he had a contract with one Mrs. Quayson for the supply of KN95 face mask as samples. The plaintiff called the said Mrs. Quayson known as Yvonne Quayson as his witness (PW1). According to PW1 the plaintiff is her friend and also business partner while the defendant is her uncle and she introduced the plaintiff to the defendant when the defendant informed her that he wanted a supply of

KN95 face mask. The plaintiff testified that when he supplied the KN95 to the defendant, he issued an invoice to him and the defendant signed same. The plaintiff tendered the said invoice and same was marked as Exhibit 'B'. the defendant alleges that it was PW1 that delivered the face masks to him but same was denied by her under cross examination when the defendant lawyer put it to her.

The first issue is whether or not there was a contract between the parties for the sale of KN95 face masks. For there to be an a contract, there must be an agreement between the plaintiff and defendant to perform promises in exchange for consideration which is legal binding and give rise to enforceable rights, obligations and remedies when there is breach. The agreement may be oral or in writing. Even though the defendant denies having any agreement with the plaintiff, the evidence on record shows otherwise. If there was no such agreement, the defendant will not have accepted exhibit 'B' and signed same when the plaintiff issued same to him. The defendant the 6000 plus KN95 mask were all samples to be shown to his customers. In determining whether there has been an agreement between the parties, it has been the practice of the Court to use the Objective test which assumes that, the existence of agreement must be objectively inferred from the conduct of the parties for instance what they have said, written and external appearance (see **Cheshire, Fufoot and Furmston's Law of Contract, 13th edition, page 29**).

This court finds that assertion not probable. If indeed he needed samples to show his customers, then it makes no sense for the plaintiff to supply more than 6000 face masks. PW1, the woman the defendant claims he had the agreement with denied his assertion and this court finds no reason why it should not to rely on her evidence.

This honourable court finds that there was a contract between the parties for the supply of KN95 face masks.

The second issue is whether or not the Defendant is in breach of contract with the plaintiff. The agreement between the parties were for the supply of KN95 face masks by the plaintiff to the defendant and the defendant was to make payment upon delivery. In the case of **ADAE v. EYIAH [1972] 2 GLR 358**, it was stated, *“The way and manner in which the plaintiff paid the advance of £G3,000 was quite contrary to the terms and the spirit of the agreement, and constituted a breach of contract on her part.”*

In this case, the defendant refusal or failure to make payment for the /* goods delivered was a breach of contract.

The reliefs sought by the plaintiff are liquidated in nature and In the case of **FOFIE v. POMAA AND OTHERS [1974] 2 GLR 6**, it was held that;

A liquidated demand was in the nature of a debt, i.e. a specific sum of money due and payable under or by virtue of a contract. The amount in question must either be already ascertained or capable of being ascertained as a matter of arithmetic. If the

a222scertainment of a sum required investigation beyond mere calculation even though it be specific or named as a definite figure, then the sum was not a debt or liquidated demand within the meaning of Order 13, r. 17 of L.N. 140A but constituted damages, in which case the plaintiff was entitled only to interlocutory and not final judgment.

The amount the plaintiff is claiming is easily attainable. Also the defendant failure or refusal to pay for the KN 95 was a breach of the contract.

The defendant alleges that he rejected the KN95 face mask that is why he directed the plaintiff to come for same. The plaintiff also alleges that, it was when the defendant was not making payment and PW1 said that she had a demand for the supply of KN95 face mask that he went for some from the defendant to PW1. PW1 also testified that she took some of the face masks because the defendant was not making payment and she wanted to resolve the problem between the parties. The evidence of the plaintiff sound more probable thn that of the defendant.

The plaintiff has succeeded in proving jis case by the preponderance of probabilities and this honourable court finds that, the defendant is indebted to the plaintiff for the sum of Thirty Three Thousand, One Hundred and Twenty Ghana Cedis (GH¢33,120.00).

Judgment is hereby entered for the plaintiff for the said sum. Interest on the sum of Thirty Three Thousand, One Hundred and Twenty Ghana Cedis (GH¢33,120.00) is to run from 29th June, 2020 being the date of delivery of the goods to the defendant till date

of final payment at the prevailing bank rate. Cost of Five Thousand Ghana Cedis (GH¢5000.00) is awarded against the defendant.

SGD.

H/L PRISCILLA DAPAAH MIREKU (MRS.) J.

CIRCUIT COURT 2, ADUM – KUMASI

10TH MARCH, 2023