

IN THE CIRCUIT COURT HELD AT TECHIMAN ON WEDNESDAY 2ND DAY OF NOVEMBER, 2023 BEFORE H/H S. D. KOTEY ESQ SITTING AS CIRCUIT COURT JUDGE

S/NO. C2/22/23

ATUGUM ELIJAH

PLAINTIFF

VRS.

KWADWO MATTHEW (NANA GOSHEN)

DEFENDANT

JUDGMENT

The plaintiff; a timber merchant at the timber market here in Techiman has brought the present action against the defendant who is a spiritualist also here in Techiman. The plaintiff's case is that he supplied some lumber to the defendant at the cost of Ghc 14,640.00 and for which the latter has defaulted in paying the outstanding balance of Ghc 4,000.00 after having settled a total of Ghc 10,640.00 for the goods supplied. On the basis of the above, the plaintiff claims the recovery of the said sum of Ghc 4,000.00 against the defendant.

The defendant on his part says that he is not liable to pay the claimed sum against him to the plaintiff. His defence is that the said sum represents the value of the goods which were defective and were not supplied. He stated in his statement of defence that the quantity of lumber supplied by the plaintiff was short by one board. He also stated that 76 pieces of the lumber which were supplied by the defendant were defective and could not be used for the roofing of the building. He also averred that the amount he has refused to pay to the plaintiff also included the cost of transportation of those lumbers which were defective and were not supplied which the plaintiff charged for the supply of the wood.

At the direction stage, the issues which the parties proposed and were adopted by the court were:

- a. Whether or not the defendant is indebted to the plaintiff in the sum of Ghc 4,000.00

b. Whether or not the defendant returned the lumber he claimed were defective?

The above issues would be determined by the court on the preponderance of the probabilities as is required by law under Section 11(4) of the EVIDENCE ACT, 1975 (NRCD 323). What this legal term means is that for each of the issues, the court will consider the evidence that each party has presented on that issue and determine which of the evidence presented should be relied upon. The choice of which one to rely upon is based on how probable the occurrence of that account is from the other. In other words, the court will prefer to rely on the evidence of a party whose account is likely more than not to have occurred. See Section 12 of the same NRCD 323 on the definition of preponderance of the probabilities. At the trial, both parties testified and invited a witness each to testify in support of their respective claim and defence.

I will begin with the first issue of whether or not the defendant is indebted to the plaintiff to the tune of Ghc 4,000.00 for the supply of lumber. In resolving this issue, the second issue of whether or not the defendant returned the lumber he claimed were defective would also be resolved together with the first one. The two issues can be resolved together without embarrassing the trial. On these issues, and from the pleading filed by both parties, there is no dispute that the plaintiff supplied the defendant with some lumber the cost of which was determined and agreed between the parties to be Ghc 14,640.00 including the cost of transportation. The defendant says that he is not liable to pay the remaining amount to the plaintiff because it represents the cost of the defective goods which he alleges were supplied to him as well as the one board which was not supplied and the transportation cost for those defective lumbers. The resolution of the issues there places a burden on the defendant to show that those boards were indeed defective and the quantity supplied was short of one board. If he is able to prove that, then the court will also as a matter of course agree with him that the amount he paid for the transportation of those lumbers be held back from being paid to the plaintiff. Thus, from the evidence before the court, the defence put up by the defendant requires that he shows that the wood supplied was short of one and 76 as he claims were defective.

Section 50(1) of the SALE OF GOODS ACT 1962 (Act 137) provides that when goods are rejected by the buyer having the right to do so, the buyer is not required to return the goods to the seller but must inform the seller of the rejection of the goods by him. Subsection 2 of the same Section 50 of Act 137 further requires the buyer to place the goods at the disposal of the seller after giving him notice of the rejection of the goods. The court is now going to assess the evidence presented by the defendant to determine whether or not he has complied with the requirements of the law on rejection of goods.

During the cross examination of the plaintiff by the defendant, the latter put it to him that that he has paid for the lumber supplied to him. The plaintiff's response was that the defendant told him that 76 of the woods supplied were defective and not that they were not supplied. When the Plaintiff's witness was also in the witness box undergoing cross examination, he told the court that the defendant told him also about the defective wood and he even suggested to the defendant to give the defective wood to a driver to return it to Techiman but he failed to do so.

In the evidence of the defendant himself at the trial, he testified that he informed the plaintiff of the defective woods supplied and asked him to replace those ones for him otherwise he was not going to pay for them. Interestingly, the plaintiff did not cross examine the defendant on all that he said to the court. The failure to cross examine the defendant meant in law that the plaintiff admits all that the defendant told the court in his evidence in chief. See the case of FORI V. AYIREBI [1966] GLR 627

From the evidence adduced before me, therefore, there is sufficient basis for the court to find that some of the woods supplied by the plaintiff to the defendant were defective. There is also evidence from the defendant to establish that he informed the plaintiff about the defective woods supplied. Both the plaintiff and his witness admitted under oath that the defendant informed them that some of the woods were defective. In the evidence in chief of the defendant which was not challenged under cross examination, the defendant, testified that 76 pieces of the wood were defective

and he informed the plaintiff of same. See paragraph 13 of the Defendant's witness statement.

From the findings above, I hold that the defendant has complied with the requirements of section 50(1) of Act 137 supra with respect to informing the seller of the defective goods supplied.

Section 50(2) requires that those goods which the defendant claims were defective must be placed at the disposal of the seller; who in this case is the plaintiff. In other words, the defendant must show that he made those goods available for the plaintiff to take delivery of them. There is no requirement on the defendant to return the defective goods to the plaintiff under the law. However, he is to ensure that those goods have not been used by him and are available for the plaintiff to go for them. According to the evidence before me by both parties, the supply of the lumber was done around September of 2022. It has been one year since the goods were supplied. I am particularly aware of how such goods can easily deteriorate and may not serve any useful purpose now if they are still available. However, the law is that the defendant shall not be held liable to pay for the lumber he claims were defective, if only he can make same available for the seller to take delivery of it. The defendant must account for the 76 pieces of lumber in whatever state they may be presently if he is to benefit from the law on the rejection of goods supplied. During the account of the plaintiff's witness, under cross examination, he told the court that it was suggested to the defendant to send the goods through the driver who was engaged to supply the goods to the defendant's location for him to return same to the plaintiff but the defendant failed to do so. As has already been stated, the law does not obligate the defendant to ensure that the goods are returned to the seller. Rather, he is obligated by the law to make same available to the seller for him to take them. The refusal by the defendant to ensure that the driver brings back the goods to the seller in techiman is within his rights under the law. However, he must ensure that said defective goods are placed at the disposal of the plaintiff.

In the circumstance, given that the court finds evidence to hold that the defendant did indicated to the plaintiff that 76 pieces of the lumber was defective, he exercised his rights within the law to reject same. Having rejected the lumber, he was not obligated to pay for it. Therefore, the plaintiff's claim for the payment of the sum of Ghc 4,000.00 is reduced by the cost of those lumber including the transportation cost of same which according to the evidence presented by the defendant is Ghc 3,430.00 (paragraph 15 of defendant's witness statement refers). The plaintiff meanwhile claims Ghc 4,000.00 from the defendant. The defendant has been able to justify why he should not be made to pay only Ghc 3,430.00 out of the amount claimed by the plaintiff. The defendant in the same paragraph 15 of his statement of defendant admits the difference between the amount plaintiff is claiming and the amount he says he is entitled to withhold from paying being Ghc 560.00. The plaintiff is held entitled to recover from the defendant the sum of Ghc 560.00 only. Since the claim of the plaintiff would have been upheld but for evidence that the defendant rejected the goods having the right to do so, I will further order that the defendant shall place the said defective goods at the disposal of the plaintiff (*in whatever natural state they may be except in a state they have been converted to by the act of the defendant or his agents or privies or workmen or family members or anybody claiming through him*) within two weeks from the date of this judgment failing which the plaintiff shall be entitled to recover from the defendant by leave of this court the total sum of the said wood unaccounted for at the price they were sold to the defendant together with interest at the prevailing bank rate from the date of this judgment until that amount is finally paid.

The parties are to bear their own individual costs.

**H/H S. D. KOTEY ESQ
CIRCUIT COURT JUDGE**