

**IN THE DISTRICT COURT HELD AT WASA AKROPONG HELD ON THURSDAY
THE 15TH DAY OF DECEMBER, 2022, BEFORE HIS WORSHIP MR. BRIGHT A.
AKOANDE ESQ- DISTRICT MAGISTRATE**

SUIT NO: A2/1/2022

FREDRICK K. OWUSU

VRS.

SAMUEL BOAH

JUDGMENT

This is an action to recovery of GHc57,000.00. The case of the plaintiff who describes himself as a small scale miner is that he hired an excavator from one Nana Kweku Darku through the defendant. He avers that he paid a total of GHc57,000.00 as hiring fee. The plaintiff asseverates that he was required under the agreement of hire to use the excavator for mining activities. He avers that the defendant and Nana Kweku Darku failed to deliver or release the excavator for him to undertake the mining activities and hence this action.

The defendant who describes himself as a businessman resisted the claim. His case as gleaned from his pleadings and evidence is that the agreement was between the plaintiff and the said Nana Kweku Darku. He avers that Nana Kweku Darko was the owner of the excavator and the one who received the hiring fee. The defendant therefore contends that the plaintiff is not entitled to his claim.

After carefully examining the pleadings and evidence, I am of the considered opinion that the issues for determination are:

- 1) Whether or not the agreement to hire the excavator was between the plaintiff and the defendant or it was between the plaintiff and one Nana Darko,
- 2) Whether or not the defendant owes the plaintiff GHc57,000.00 and
- 3) any other issue or issues arising from the pleadings.

Before I determine the issues, I will briefly touch on the burden of proof. The rule in civil cases is that the plaintiff who in his pleadings or writ raises issues essential to the success of his case assumes the onus of proof; see *Faibi Vrs. State Hotels Corporation* [1968] I G L R 471. The burden of proof is statutorily defined in section 11 (1) and (2), ii (1) and (4) and 12 (1) and (2) of the Evidence Act, 1975 (Act 323). Therefore, in the instant case, the burden lies on the plaintiff to adduce sufficient admissible evidence to convince the court on a balance of probabilities that his claim is more probable than not.

I now proceed to determine the issues. The first issue for determination is whether or not the agreement to hire the excavator was made between the plaintiff and the defendant or it was made between the plaintiff and one Nana Kweku Darko. The defendant's evidence that he was not the owner nor the hirer of the excavator was not denied by the plaintiff. Also, the defendant's evidence that one Nana Kweku Darko was the owner and hirer of the excavator was not also denied by the plaintiff. Again, the defendant's evidence that the agreement to hire the excavator was made between the plaintiff and Nana Kweku Darko was not also denied by the plaintiff.

The law is settled that when a party gives evidence and it is not denied by the opponent, the evidence is deemed to have been admitted sub silentio by the opponent; see *Fori Vrs. Ayirebi* [1966] I GLR 627. I therefore find on the evidence that the agreement to hire the excavator was made between the plaintiff and Nana Kweku Darko and not between the plaintiff and the defendant. The law is settled that a person who is not a party to a

contract cannot be subject to a liability under it; see Dunlop Pneumatic Tyre Company Limited Vrs. Selfridge and Co. Ltd [1915] Act 847.

The second issue is whether or not the defendant owes the plaintiff GHc57,000.00. Ordinarily, I would have dismissed the plaintiff's claim in its entirety since the agreement was made between the plaintiff and one Nana Kweku Darku, but the defendant admitted during cross-examination that he was liable to only GHc4,000.00. So to the extent that the defendant admitted during cross-examination that the plaintiff gave him only GHc4,000.00 and that he was liable to only GHc4,000.00, I find that the defendant owes the plaintiff GHc4,000.00. I hold that the defendant owes the plaintiff GHc4,000.00 and not GHc57,000.00.

With respect to the third issue for determination, I have carefully scrutinized the pleadings and critically examined the evidence on the record and I am satisfied that there is no other issue for determination.

For the reasons given above, the defendant is found liable to a part of the claim. Judgment is entered for the plaintiff to recover GHc4,000.00 from the defendant.

Costs of GHc2,000.00 is awarded against the defendant.

(SGD)

MR. A. A. BRIGHT
DISTRICT MAGISTRATE