IN THE DISTRICT COURT 2, TAMALE

HELD ON THURSDAY 17TH NOVEMBER, 2022

BEFORE HIS WORSHIP D. ANNAN ESQ.

SUIT NO: A2/66/22

BETWEEN

IDDRISU ABDUL HANAN - PLAINTIFF

AND

ALHASSAN ALHASSAN - DEFENDANT

JUDGMENT

INTRODUCTION

1. The plaintiff describes himself as a businessman who deals in electrical products whereas the defendant deals in cars and sale of land. Both are resident in Tamale.

2. By an amended writ of summons, together with a 39 paragraphed statement of claim, issued on 28th September, 2021 the plaintiff claims against defendant for the following:

a. An order directed at the defendant to pay the sum of GHS44,700.00 being the total sum of money owed the plaintiff by the defendant.
b. An order directed at the defendant to pay interest on the total amount owed the plaintiff from the date of the debt to the day of final judgment.
c. A declaration that the defendant breached the contract between them.
d. Damages for breach of contract.
e. Costs.

3. The defendant disputed the plaintiff's claim in a 51 paragraphed statement of defence filed on 25th October, 2021.

4. The plaintiff in a lengthy reply, 26 paragraphs, filed on 22nd November, 2021 disputed the averments of the defendant.

5. As it can be seen, the pleadings are quite lengthy. However, in brief, this case is actually a mix-bag of land and commercial transactions as well as allegations of fraud. It started with plaintiff buying plots of land from defendant. He used his vehicle and also made cash payment. Later, the plaintiff was disinterested in the land and asked for the return of the vehicle and cash paid. Defendant claims the vehicle had been sold, so plaintiff should give him time to refund the money. Plaintiff takes defendant's car as collateral until defendant returns his money. Defendant makes part payment and goes for his car saying he has a buyer. The car developed a mechanical fault. Plaintiff contributed to repair the car, all in attempt to retrieve his money after the sale. The defendant sold his car but did not refund plaintiff's money. With this summary, I shall now highlight the respective evidence of the parties.

PLAINTIFF'S CASE

6. The plaintiff's case is that on or about July 2020, the defendant approached him that he had 17 plots of land for sale all at GHS50,000.00. Plaintiff tendered in evidence copies of the allocation letters for the 17 plots as Exhibits A-A16 series. After expressing interest, he gave the defendant his Toyota Corolla S valued GHS41,500.00 and a cash of GHS5,500.00 as part payment. Copy of the agreement was tendered as Exhibit B. Subsequently, plaintiff paid GHS700.00 for the land documentation. Plaintiff added that on receipt of the land documents, he conducted an informal search at the Town and Country Planning and it was revealed that the said land was a water way and that it did not belong to the defendant and also not for sale. Copy of the informal search tendered as Exhibit C. A formal search letter was filed by plaintiff's lawyer to the Metro Director, Town and Country Planning marked at Exhibit F and the reply marked as Exhibit F1, dated 19/11/21 and 24/11/21 respectively.

He, therefore, requested for a return of his Toyota Corolla S and cash paid. However, defendant informed him that he had sold the vehicle.

7. After several demands, plaintiff argues that defendant gave him his Rexton 4x4 to hold as collateral. According to the plaintiff, he did not use the car for the two days after he picked it, but when he wanted to run the engine, it would not start. Plaintiff contends that defendant knew of the fault so when he (defendant) came with a mechanic, the fault was repaired in just some few minutes. Plaintiff, therefore, pleaded fraud against the defendant in that defendant knew of the fault before giving him the car. Plaintiff further stated that defendant subsequently paid GHS12,000.00 and picked the Rexton under the pretext that he had found a buyer. Plaintiff, however, contends that defendant after picking the vehicle informed him that the vehicle had developed another fault but he did not have money for the repairs and needed financial assistance. So, he then gave the defendant an additional GHS9,000.00 used to buy two engines, all in attempt to get the car saleable and for him to get his money. He tendered in evidence as Exhibits D series being photographs of the two engines and E being a receipt for one of engines. Defendant engaged a mechanic but he could not fix it when the first engine was bought. Plaintiff suggested another mechanic which led to the purchase of the second engine.

8. When the car was unrepairable, plaintiff indicated that the police directed him to pay for the car since it had been with his mechanic all this while. Plaintiff indicated further that he got to know at this point that the car had been brought into the country without proper documentation. He then agreed to purchase the Rexton, but insisted on the car documentation. Plaintiff contends that because defendant knew the car had no proper documentation, defendant changed his mind to pick the car and refund his money. He again pleaded fraud that the car had no proper documentation. He tendered in

evidence, Exhibits G, G1, H and H1 being letter from plaintiff's lawyer to Customs, a reply note to the said letter, a DVLA receipt and a DVLA vehicle particulars in the name of one Grace Addae, respectively. Unfortunately, after the sale of the Rexton, the defendant has failed to pay him his money.

9. In support of his claim, plaintiff called two witnesses, Iddrisu Abdul Rashid (PW1) and Iddrisu Yakubu Sulemana (PW2). PW1 corroborated the evidence of plaintiff, but added that when they found out that the land was a marshy area and not for sale, he accompanied the plaintiff to the defendant where the defendant gave out the Rexton car as collateral. He tendered a photograph of the Rexton 4x4 as Exhibit J.

10. According to PW2, he added that at the police station the plaintiff was asked to pay for the price of the Rexton 4x4 because defendant insisted that the plaintiff had kept the car for far too long. He stated further that the plaintiff insisted on the documents of the car, but defendant failed to produce it. He further stated that defendant later changed his mind to pick the vehicle and to return plaintiff's money.

DEFENDANT'S CASE

11. According to the defendant, the plaintiff expressed interest in the 2½acre land. He claims that the plaintiff bought the land on the strength that he (defendant) had earlier sold a parcel of land to their mutual friend Iddrisu Abdul Rashid (PW1) and that the said 2½ acre land was just close to that of PW1. He stressed that the area had not been zoned at the time of sale. Defendant indicated that when the plaintiff demanded for a surveyor to demarcate the land, he got a surveyor and also the secretary of the Nyanpkala Chief of which Exhibits A series were issued. He further indicated that the cost of the said land was GHS40,000.00 and not GHS50,000.00 as claim by the plaintiff.

12. Defendant argues that plaintiff valued his Toyota Corolla S at GHS35,000.00 and to pay GHS5,000.00 as cash for the said land. Plaintiff, however, gave out the vehicle and made cash payment of GHS3,000.00. Defendant stated that the plaintiff insisted to pay the surveyor GHS700.00 out of GHS2,000.00 cash outstanding. When the plaintiff informed him that Town and Country Planning had indicated that the said plots were not on their system, plaintiff then demanded for the return of the Toyota Corolla S and his money, but he told plaintiff that he had sold the vehicle and needed time to refund the money. Defendant claims that plaintiff later came to his store and demanded that he picks the Rexton 4x4 (valued at GHS75,000.00) until he returns the money. He further claims that, 2 weeks after picking the Rexton, he paid the plaintiff GHS12,000.00 and pleaded with plaintiff to give him the car because he had a buyer. However, when plaintiff agreed, the car could not start. Defendant stated that when he asked the plaintiff what caused the fault, plaintiff informed him that the car run out of fuel and so he bought fuel and the problem started. So plaintiff requested for one week to repair it.

13. Having failed to repair and upon several demands, defendant then reported the plaintiff to the police and the police asked plaintiff to either return the car or pay for the cost of it. He also went to the Bureau of National Intelligence (BNI) now National Intelligence Bureau (NIB) to prevail on plaintiff to either fix the car or deduct his outstanding balance and return his money. According to the defendant, upon failed attempts by the plaintiff to fix the car, he decided to abandon it and leave it to God and the plaintiff also indicated that he was not interested in the Rexton so defendant could go for it. Defendant claims both parties agreed not to pursue each other. Well, after 4 months he then received this present suit. Defendant maintains that he did not defraud plaintiff in the sale of land and also there was valid documents covering the Rexton 4x4. He maintains that plaintiff is not entitled to his claim.

ISSUES FOR TRIAL

14. The issues borne out of the facts are:

    a. *Whether or not the defendant misrepresented to the plaintiff in the sale of the plots of land?*

    b. *Whether or not the defendant owes the plaintiff GHS44,700.000?*

BURDEN OF PROOF

15. In civil cases, the law is that he who asserts usually has the burden of proving his case on a preponderance of probabilities. Preponderance of probabilities, according to section 12(2) of Evidence Act, 1975 [NRCD 323] means:

> "… 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."

16. Where the plaintiff has been able to lead sufficient evidence in support of his case, then it behooves upon the defendant to lead sufficient evidence in rebuttal otherwise the defendant risks being ruled against on that issue or issues. Section 11(4) of NRCD 323, a party discharges the burden of producing evidence when the party produces

> "... sufficient evidence so that on all the evidence a reasonable mind could conclude that the existence of the fact was more probable than its non-existence".

17. To lead sufficient evidence, Ollennu J (as he then was) in the celebrated case of **Majolagbe v. Larbi [1959] GLR 190 at 192** held thus:

> "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." [Emphasis mine.]*

18. It is important to state, however, that where fraud is pleaded in a civil case, the standard of proof required is one of proof beyond reasonable doubt. Section 13(1) of the NRCD 323 states that:

> "In any civil or criminal action, the burden of persuasion as to the commission by a party of a crime which is directly in issue requires proof beyond a reasonable doubt".

ANALYSIS OF THE ISSUES

19. Now, before I go onto to deal with the issues, let me mention that the plaintiff alleged fraud regarding the sale of the land and attempted sale of the Rexton 4x4. With respect to the attempted sale of the Rexton, there is no need in my opinion to delve into this matters since parties came to a point where plaintiff was insisting on the car documents for the sale but allowed defendant to take the car. I also note more particularly that the defendant in paragraph 23 of his witness statement had admitted to refund plaintiff's money but needed more time. Hence, the determination of whether there was fraud regarding the sale of the Rexton car, it would be an exercise

in futility since the sale never took place. At the end of the day, defendant was allowed to go for the car, although plaintiff was insisting on the car documents. And the car has been sold by the defendant, whether with valid documents or not, it is not germane to the issues at stake. The facts about the Rexton, however, is the amount spent in attempt to fix it, which I shall consider later in the judgment. Lastly, as to whether both parties agreed not to pursue each other, today, we find ourselves in court.

Issue a

20. Issue a, *whether or not the defendant misrepresented to the plaintiff in the sale of the plots of land,* I have earlier in this judgment mentioned section 13(1) of NRCD 323 which requires that any allegation of crime in a civil suit must be proved beyond reasonable doubt. In **Aryeh & Anor. v. Iddrisu [2010] SCGLR 891**, the Supreme Court clearly puts it in the following terms:

> "The rule in section 13(1) of the Evidence Act, 1975 emphasises that where in a civil case, crime is pleaded or alleged, the standard of proof changes from the civil one of the balance of probabilities to the criminal one of proof beyond reasonable doubt."

21. The authorities have also held that a party who wishes to rely on fraud in support of his case must also particularize it and then lead evidence in proof of the fraud. In **Seidu Mohammed v. Saanbaye Kangberee [2012] 2 SCGLR 1182**, the Supreme Court stated this position of the law in the following terms:

> "It is trite learning that for anyone to succeed with a serious allegation like fraud which has the tendency to vitiate acts done regularly, the particulars, which must be pleaded, must also be proven."

22. Plaintiff at paragraph 35 of in his statement of claim states that:

> 35. The plaintiff avers that the defendant at all material times in dealing with the plaintiff intended to defraud the plaintiff knowing he had no 17plots of land for sale.
>
> Particulars of Fraud
>
> i. The defendant represented to the plaintiff plots number 90-91-92-93-94-95-96-97-98-99-100-101-102-103-104-105-106 belonged to him knowing same to be false.
> ii. The defendant with the intention to defraud the plaintiff sold the plots of land knowing and or with the ability of knowing that the land was demarcated as waterway.
> iii. The defendant through those false representations got the plaintiff to part away with his Toyota Corolla S worth GHS41,500.00 and cash sum of GHS5,500.00
> iv. The defendant with the intension to defraud the plaintiff also intentionally sold the plaintiff's car to a third party after the plaintiff had discovered and communicated to the defendant that the land was earmarked as waterway.
> v. The defendant used the proceeds from the sale of the Toyota Corolla S for his personal gains at the expense of the plaintiff."

23. From the evidence, plaintiff stated that he conducted an informal search at the Town and Country Planning and it was revealed that the said land was a water way, and that it did not belong to the defendant or for sale. Exhibit C the copy of the informal search is a picture of a laptop computer screen showing a site plan. Also, plaintiff tendered a search letter from his lawyers to the Metro Director, Town and Country Planning, Tamale marked at Exhibit F. The Tolon District Assembly also replied to

the search letter and same was marked as Exhibit F1. Plaintiff added that because of the search results, the defendant knew the plot was not for sale but yet sold it to him.

24. Defendant, on his part, contends the plaintiff bought the 2½ acre land on the strength that he (defendant) had earlier sold a parcel of land to their mutual friend Iddrisu Abdul Rashid (PW1) and that the said land was just close to that of PW1. He stressed that the area had not been zoned at the time of sale and that it was the plaintiff who demanded for a surveyor to demarcate the land. He, the defendant, then got a surveyor and also the secretary of the Nyanpkala Chief for the land to be demarcated into plots and also confirmed that the land belongs to him. Defendant stated at paragraph 22 of his witness statement that, ".. long after the sale, plaintiff came back to me that Town and Country Planning told him that the said parcel of land was not in their system and that if plaintiff wanted the said land to be captured in their system, he the plaintiff will bear the cost for Town and Country to pick the zones and put it in their system and defendant says that plaintiff agreed to buy without the site plan and as such he the defendant will not bear the cost. It was there plaintiff said he was no longer interested in the land and demanded that his Corolla S be returned to him." Defendant maintains he did not defraud the plaintiff.

25. This is what also ensued when plaintiff was under cross-examination

Q: Abdul Rashid earlier informed you that he had bought a land from the defendant, is that not so?

A: Yes.

Q: So it was on the basis of your brother's previous deals with the defendant that you agreed to buy 2½acre land from the defendant?

A: Yes

…

Q: I suggest to you that the defendant in your pre-negation deal he told you the said land was unplanned which you agreed to buy?

A: He did not tell me that.

Q: I further suggest to you that you requested from the defendant whether the said lands could be zoned into plots?

A; I did not ask him that.

Q: Per your agreement letter, Exhibit B, it is clearly shown that on the face of the agreement that the defendant sold to you plots, not so?

A: When he told me about the plots, I asked him and he said the whole land was 2½acres and I asked how would I get to know the number of plots that are in the land. It was then that he told me that he can look for a surveyor to survey the land and that anytime I want to sell some of the plots I can sell it.

….

Q: By the time you were buying the plot you saw it?

A: That is so. After I saw the plot, I went and did my search at Town and Country Planning and it was revealed that, that area is a waterlog area and a waterway.

Q: You have not been truthful to this Court, because right from the day one you were told by the defendant that the land was unzoned area and you agreed to buy and paid for it?

A: That is not correct.

Q: And you were also involved even in the preparation of the allocation letters by the traditional authorizes?

A: That is not correct.

Q: And you even said it should be allocated in plots for you?

A: That is not correct.

26. Let me also state here that the agreement for the sale of land, Exhibit B, is dated 9th July, 2020. Exhibit A series that is the allocation letters are dated 12th July, 2020. Exhibit C, the informal search has the date 17th July, 202o. The official search results, i.e. Exhibits F, plaintiff's lawyer's letter with answers by the District Officer, Physical Planning Department, Tolon District Assembly has the date 21st November, 2020 and Exhibit F1 the official reply to plaintiff's lawyer's letter is dated 24th November, 2021. The informal search according to the plaintiff was that the land was a waterlog, it does not belong to the defendant and was not for sale. The official search results stated that, the land in question had been "zoned", however the land was "reserved as a marshy area" and "not suitable for residential purposes". From the evidence, it is clear to this court that at the time of agreeing to buy the land (Exhibit B dated 9th

July, 2020), the land was demarcated into plots numbered 90-106 as stated thereon. Exhibit F1 also confirms that the land had been zoned, however, it was not for residential purposes. On Exhibits A series, it is stated that the land is "allocated for residential/commercial/industrial use". It is unclear from the agreement between the parties, Exhibit B, whether the land was for residential or non-residential purposes. Also, neither of the official search results stated that the land was not for sale. It is only the informal search that the plaintiff claims it was not for sale and it did not belong to defendant. I do not think that any reasonable person would expect the court to rely on an informal search in proof a crime requiring proof beyond reasonable doubt. In any case, the date on Exhibit C, 17th July, 2020 does not inure to the benefit of the plaintiff, who tendered same. The land indeed was for sale but it was a marshy area and not intended for residential purposes.

27. It is my view that the when the plaintiff got to know that the land was a marshy area, then he decided to ask for the return of his money. Therefore, on the totality of the evidence, I find that the plaintiff has failed to lead sufficient evidence in proof beyond reasonable doubt that the defendant sold the plots to him with the intent to defraud him. He simply did not like the marshy area. Considering the number of plots, if he had been mindful to engage the services of a lawyer or filed an official search (as he later did through his lawyers), he would have resiled at the pre-contract stage in that the land was not the type of land he wanted to buy, let alone parting with his car and money.

Issue b

28. Issue b, thus *whether or not the defendant owes the plaintiff GHS44,700.000.* This issue to me is germane issue in resolving this matter. Here, the law requires the plaintiff in

establishing that defendant owes him GHS44,700.00, to prove on the balance of probabilities. In the case **Okudzeto Ablakwa (No. 2) v. Attorney-General & Obetsebi-Lamptey (No. 2) [2012] 2 SCGLR 845,** the Supreme Court in dealing with the onus of proof of such an allegation held at page 867 as follows:

> "...What this rule literally means is that if a person goes to Court to make an allegation, *the onus is on him to lead evidence to prove that allegation*, unless the allegation is admitted. If he fails to do that, the ruling on that allegation will go against him. Stated more explicitly, a party cannot win a case in Court if the case is based on an allegation which he fails to prove or establish."

29. Let me rehash what was stated in **Majolagbe v. Larbi (supra)** in that "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". See also the cases of **Ackah v. Pergah Transport [2010] SCGLR 728 @ 730** and **Klah v. Phoenix Insurance Company Limited [2012] 2 SCGLR 1139.**

30. From the amended writ of summons, plaintiff puts his claim at GHS44,700.00 with the following particulars:

"a. Recovery of the sum of GHS35,000.00 being the remaining sum of money advanced to the defendant by the plaintiff as consideration for 17plots of land.

b. Interest on the GHS35,000.00 from July, 2020 to date of final judgment.

c. Recovery of the sum of GHS700.00 being the total sum of money defendant obtained from the plaintiff under the pretext of securing him documents to the said land.

c. Interest on the GHS700.00 from July, 2020 to date of final judgment.

d. Recovery of GHS9,000.00 being the total sum of money the plaintiff spent in repairing the Rexton 4x4 vehicle of the defendant.

e. Interest on GHS9,000.00 from date of the debt to the date of final judgment

f. Damages for breach of contract

g. Costs.

31. Plaintiff in support of his claim stated that per their agreement, Exhibit B, the cost of the land was GHS50,000.00. He parted with his Toyota Corolla S valued at GHS41,500.00 and cash of GHS5,500.00. From Exhibit B, the amount remaining thereof was GHS3,000.00. At paragraph 6 of his witness statement, he mentioned cash paid was GHS8,500.00 but at paragraph 8, he mentioned GHS5,500.00 and puts the total at GH47,000.00. I note that the GHS8,500.00 is a typo and that throughout his evidence, the cash sum of GHS5,500.00 was mentioned and when GHS5,500.00 is added to the GHS41,500.00 it equals the GHS47,000.00 as stated at paragraph 8. Plaintiff also indicated that he paid GHS700.00 for the land documentation. At this moment, the debt stood at GHS47,700.00.

32. Plaintiff contends when he demanded for the Toyota Corolla S and money to be paid, the defendant agreed to refund his money having noted that the Toyota Corolla S had been sold. Later, the defendant paid GHS12,000.00. Plaintiff claims he only held the Rexton 4x4 as collateral for two days whiles waiting for the defendant to return his money. However, when the defendant picked the vehicle, he had to pay an additional GHS9,000.00 for the repairs (i.e. the two engines) all in attempt to get the car sellable

and for his money to be returned. In his witness statement, plaintiff stated at paragraphs 18, 19, 20, 21, 22, 23, 24, 25 and 26 (which is similar to paragraphs 14, 15, 16, 17, 18, 19, 20, 21 and 22 of his statement of claim) as follows:

17. I say that two days after the Rexton 4x4 car was delivered to me, I decided to turn on the engine in order to keep the car safe, but the engine could not be turned on. When I informed the defendant, the defendant confirmed knowledge of the fault.
18. I say that the defendant invited his mechanic to fix the car and they did so within a short period because they knew the problem of the car.
19. I say that the defendant subsequently advanced GHS12,000.oo to me and picked the car under the pretext of finding a buyer.
20. I say that the defendant after picking the car informed me that the car had developed another fault and therefore the buyer failed to buy it.
21. I say that the defendant requested me to pay part of the cost of repairs so as to facilitate quick repairs and sale of the car.
22. I say that I agreed to pay 50% of all the repair cost believing that the proceeds from the sale would be used to pay me the money owed by the defendant.
23. I say that the defendant engaged a mechanic to repair the car but the mechanic could not fix it.
24. I say that I suggested that the car be sent to an expert by name Abdallah. Abdallah diagnosed the car and concluded that the car needed a new engine to be able to function.

25. I say that the defendant said he did not have money immediately and therefore I advanced a sum of GHS4,500.00 for the purchase of the engine, but the engine could not work.

26. I say that I again advanced GH4,500.00 to the mechanic by name Abdallah to buy another engine. Find attached Exhibits D and D1.

33. With the payment of the GHS12,000.00 by the defendant and the plaintiff expending an additional GH9,000.00, the debt now stands at GH44,700.00. Plaintiff maintains that since the defendant changed his mind not to sell the Rexton to him, defendant intended to overreach him, in that defendant had sold the Rexton, yet failed to refund his money. Hence, the demand for the GHS44,700.00.

34. Defendant disputes plaintiff's claim saying that the land was sold at GHS40,000.00 and not GH50,000.00 and that plaintiff valued his Toyota Corolla S at GHS35,000.00 and indicated to pay cash of GHS5,000.00. He contends that plaintiff, however, gave out the Toyota Corolla S and but made cash payment of GHS3,000.00. Defendant adds that the plaintiff insisted to pay the surveyor GHS700.00 out of GHS2,000.00 cash outstanding. At paragraph 25 of his witness statement, defendant stated that when plaintiff demanded for the refund of his money, he stated he had by then sold the Toyota Corolla S and so requested for more time to refund the money. At this point, the debt stood at GHS38,700.00.

35. Defendant contends further that plaintiff picked his Rexton 4x4 to hold until he refunded plaintiff's money which was GHS38,000.00 at paragraph 35 of his witness statement. (I do not see how defendant ascertained the GHS38,000.00). He further maintains that it was plaintiff who demanded to keep the Rexton which is valued at GHS75,000.00. Two weeks later after paying the GHS12,000.00, defendant claims he

went to pick the Rexton 4x4 since he had found a buyer. However, when he went for the vehicle it had a fault. Defendant stated at paragraph 30 of his witness statement that he gave the plaintiff one week to fix the vehicle but for six months plaintiff was not able to fix it. He then reported the plaintiff to the police and the police directed plaintiff to either return the car or pay for the cost of it since he had kept it for too long. He also went to the BNI (now NIB) to prevail on plaintiff to either fix the car or deduct his outstanding balance and return his money. He added that since plaintiff had failed to fix the vehicle or return his balance, he left the matter to God. He indicated that the plaintiff then said he was not interested in the vehicle so he (defendant) can go for his vehicle and that both parties agreed not to pursue each other.

36. From the evidence, this is what also ensued when defendant was under-cross examination:

Q: So you will agreed with me that the GH12,000.00 is the only money you paid to the plaintiff, not so?

A: The GH12,000.00 is the only money I paid to the plaintiff in addition to the vehicle and documents

Q: In your evidence to this court, you indicated that you sold the Rexton vehicle, not so?

A: Yes.

Q: But when you sold it you failed to pay the plaintiff his money, not so?

A: Yes, I fail to pay.

37. As I mentioned earlier in this judgment, the defendant went back for his Rexton 4x4 vehicle, so there is no need establishing whether or not the attempted sale of the Rexton 4x4 to the plaintiff was tainted with fraud. It is, however important, to note that the plaintiff had paid an additional GHS9,000.00 for the repairs. Defendant did not dispute this payment but claims it was the plaintiff who caused the fault and had to fix it. Plaintiff argues that it was defendant who informed him that the car had develop another fault after he had pick.

38. Below are extracts when the plaintiff was under cross-examination:

Q: At the time you were taking the said Rexton 4x4 you drove it right from the defendant's shop to your house?

A: That is so.

Q: So that clearly suggests that the said Rexton was in right condition?

A: That is so. But a car can be having a hidden fault that may only be known by the defendant. Because when I was to take the car from the defendant, defendant started the car by himself for me, before I drove it away. So when I went to pack the car, after two days I intended heating the car but it did not start. So I called defendant who came together with a mechanic and (they)sic told me that the car has a slight problem to which it was known to the defendant. In less than 5 minutes they were able to start the car and they drove it away.

Q: For how long has the car being with you?

A: The car spent 2days with me.

Q: I put it to you that the car has not stayed with you for 2days.

A: What I said is true. It spent 2 days with me.

Q: Where was the car when you chose to buy the engine?

A: It was at a mechanic shop.

Q: Who sent it to the mechanic shop?

A: The defendant.

Q: Whose mechanic was it?

A: A mechanic of the defendant

Q: Who is Abdullah?

A: He is also a mechanic who was also trying to put the car in right condition so that it would be drivable.

Q: Who suggested that the vehicle be taken to Abdullah?

A: It was I and the defendant

Q: Per paragraph 24 of your own witness statement, 'I say that I suggested the car be sent to an expert by name Abdullah. Abdullah diagnosed the car and concluded that the car needed a new engine to be able to function', so it was you who suggested that the car be sent to Abdullah and not any decision of you two?

A: That is so. I suggested and the defendant agreed with me because the defendant's mechanic could not repair the car.

Q: I further suggest to you that there is nowhere in your own witness statement did you say that the two of you had agreed to send the vehicle to Abdullah?

A: It is not stated in my witness statement, but if he did not agree I in my own capacity could not have taken the car from his mechanic to my mechanic. Because the defendant's mechanic does not know me, so there is no way I could have done that without the understanding of the defendant.

…

Q: It was when you filled the vehicle with the way-side fuel that the vehicle developed a mechanic problem?

A: That is not true

Q: Your testimony in this court, you indicated the defendant had not told you the price of the vehicle, is that not so?

A: That is so.

Q: So it means that he had not intended to sell the said car?

A: I do not know if he was to sell it or not, I cannot tell. It was given to me because of my money.

Q: And you recalled that after you had failed to fix the said vehicle, the defendant reported you to the police?

A: That is so. I was only helping the defendant to put the vehicle back into good shape because of my money. But I was not supposed to repair the car and I did not spoil the car.

Q: If you did not spoil the car why did you bother to fix it?

A: I was helping the defendant to fix it because my money is with the defendant, so that I can recoup my money.

Q: If it was the responsibility of the defendant that the car had spoiled, he would not need your assistance, because you are not a father Christmas?

A: If someone is owing you and you are helping the person to pay you back, wouldn't you do that, and I would do that.

…

Q: And it was at the BNI office that it came to light that you could not fix the vehicle at all?

A: That is so.

Q: There, the defendant told you that he had left the matter to God?

A: I do not know what you are saying.

Q: There you said, if that was the case, you were also not interested in the vehicle after all the vehicle is not yours and that defendant could go to Donayili and pick the vehicle from[sic] the mechanic?

A: That is not true.

Q: It was there that the two of you agreed not to pursue each other?

A: That is not true.

39. From the evidence, PW1 tendered Exhibit J a picture of the Rexton. PW1 claims he accompanied the plaintiff when they went for the money but rather they took the Rexton to hold until defendant refunds the money. The date on Exhibit J is 24th August, 2020. The dates on Exhibit D1 and E, being picture of the engine and receipt of the engine purchased is 1st October, 2020.

40. From the above, I find the evidence of plaintiff more credible. See the case of **Ntim v Essien [2001-2002] SCGLR 451.** Reasons are that, from Exhibit B it states that the agreement for the sale of the land is GHS50,000.00. However, defendants claims it is GHS40,000.00. Even under cross-examination he still denied that Exhibit B which he duly signed states GHS50,000.00. I do not see where he got this GHS40,000.00 from. Moreso, when he admitted to refund plaintiff's money, he stated that the amount was GH38,000.00 at paragraph 35 of his witness statement. Again, the mathematics does add up. With respect to the GHS700.00 for the land document, here the defendant did not dispute it. Regarding the GHS9,000.00 repairs, I again agree with the plaintiff's story in that at the time the Rexton developed the fault, it was with the defendant's mechanic. If the defendant claims that at the time he went for the car, the car was faulty and he gave the plaintiff one week to fix it and it took six months and yet plaintiff was still unable to fix it, how then did the car get to his mechanic? I believe the car developed another fault and it was with defendant's mechanic in the first place. When the defendant wanted to quickly fix it and sell, but was not having money, he went to the plaintiff for financial assistance. Plaintiff then agreed to assist at 50% of the cost but ended up paying GHS9,000.00. What is unclear, however to this court, is the total cost of attempted repair. At best, plaintiff claims that defendant did not have money so he had to bear the cost of the two engines at GHS9,000.00. Furthermore, I do not agree with defendant that he left the matter to God or that both parties agreed not to pursue each other. In fact, if defendant left the matter to God or that sold or left the car for plaintiff, why then did he go back for the vehicle? Plaintiff says that defendant could not have sold the vehicle to him because the vehicle lacked proper documentation. Also because he did not have proper documentation, he (the defendant) went back for it. He might as well left it in satisfaction of the debt. But for the insistence of plaintiff for the documentation, defendant went for the car again. It

tells me that the defendant wants to profit at both ends. He later sold the vehicle, but has since failed to refund plaintiff's money:

Q: Can you tell the whereabout of the said vehicle after you took it from the plaintiff?

A: I sold it at scrap price.

…

Q: But when you sold it you failed to pay the plaintiff his money, not so?

A: Yes, I fail to pay.

41. In effect, on the totality of the evidence, I find that the plaintiff has led sufficient evidence of facts and circumstances in proof his claim that the debt stands at GH44,700.00 and I so hold, see the case of **Majolagbe v. Larbi (supra).**

42. Finally, having concluded on issues a and b, I note that plaintiff is seeking interest, damages and costs. Regarding interest, plaintiff is seeking for interest on the total sum of GHS44,700.00. Thus, interest on the GHS35,000.oo and the GHS700.00 from July 2020 to date of final judgment, but on the GHS9,000.00 interest to start from "the date of the debt to the date of final judgment". From the evidence above, the GHS9,000.00 accrued sometime around 1st October, 2020 and therefore interest shall run from that date till date of judgment.

43. Also, plaintiff did not specify the interest rate to be applied. The power of the Courts in Ghana to award such interest has been re-enacted in rule 1 of CI 52 of the Court (Award of Interest and Post Judgment Interest) Rules, 2005. Since there is no

agreement between the parties that covered interest exigible in this instance, I therefore hold that the interest rate chargeable on the debt outstanding shall be calculated at the prevailing bank rate effective from the date the debt accrued till the date of this judgment.

44. Regarding damages for breach of contract, in my opinion, it is the plaintiff who rather resiled from the contract on knowing that the land was in a marshy area and therefore requested for the return of his money. I do not see damages flowing to plaintiff for resiling from the contract, and so I shall not make any determination to that effect.

CONCLUSION

45. I hereby enter judgment in favour of the plaintiff for the following:
    a. Recovery of the sum of GHS44,700.00 being the total sum of money owed the plaintiff by the defendant
    b. Interest at the prevailing bank rate on
        i. the amount of GH35,700.00 from July, 2020 till date of judgment
        ii. the amount of GH9,000.00 from October, 2020 till date of judgment
    c. Costs assessed at GH10,000.00.

H/W D. ANNAN

[MAGISTRATE]

MABEL L. AWUNI HOLDING THE BRIEF OF IBRAHIM YUSSIF ESQ. FOR THE PLAINTIFF

HALID ABDUL RAUF ESQ. FOR THE DEFENDANT

References:

1. *11(4), 12(2) and 13(1) of Evidence Act, 1975 [NRCD 323]*
2. *Majolagbe v. Larbi [1959] GLR 190 at 192*
3. *Aryeh & Anor. v. Iddrisu [2010] SCGLR 891*
4. *Seidu Mohammed v. Saanbaye Kangberee [2012] 2 SCGLR 1182*
5. *Okudzeto Ablakwa (No. 2) v. Attorney-General & Obetsebi-Lamptey (No. 2) [2012] 2 SCGLR 845*
6. *Ackah v. Pergah Transport [2010] SCGLR 728 @ 730*
7. *Klah v. Phoenix Insurance Company Limited [2012] 2 SCGLR 1139*
8. *Ntim v Essien [2001-2002] SCGLR 451*
9. *Rule 1 of the Court (Award of Interest and Post Judgment Interest) Rules, 2005 [CI 52]*