IN THE DISTRICT COURT, ABURA DUNKWA, CENTRAL REGION OF GHANA ON 30TH AUGUST, 2022 BEFORE HER WORSHIP, JULIANA S.P. MENSAH, ESQ. (MRS.)

SUIT NO. A2/88/2022

JOHN QUANSAH … PLAINTIFF
ABURA EDUMFA

VRS.

EMMANUEL AMOAKWANOH … DEFENDANT
ABURA EDUMFA

PARTIES: Present

JUDGMENT

It is Plaintiff's claim that he contracted Defendant to construct a container for him. The parties agreed on GH₵1,900.00 as the cost of the container. On 22nd February 2021, Plaintiff made an initial payment of GH₵1,500.00 from a loan Plaintiff contracted. Defendant promised to complete the container in March, 2021 but has failed to do so and also refused to refund the money after several demands. Plaintiff therefore on 19th April, 2022, commenced this suit claiming against Defendant a total amount of GH₵4,500.00 made up of the following:

1) Cash the sum of One Thousand Five Hundred Ghana Cedis (GH₵1,500.00) being money the defendant took with the pretext of supplying Plaintiff with a container.

2) Cash the sum of Three Thousand Ghana Cedis (GH₵3,000.00) being accrued interest on the principal loan amount Plaintiff took.

3) Interest, to be calculated using the current bank rate till the amount is liquidated.

The Defendant pleaded liable to Relief 1 being the principal amount but not liable to Reliefs 2 and 3. Judgment was entered for Relief 1 in favour of Plaintiff and a date set for the trial of Reliefs 2 and 3.

ISSUES

The issues that arise for determination by this court are

1. Whether or not Plaintiff is entitled to interest of GH₵3,000.00 on the loan of GH₵1,500.00

2. Whether or not Defendant breached the agreement to construct a container for Plaintiff.

THE LAW ON BURDEN OF PROOF

The Evidence Act, 1975 (NRCD) 323 Section 11 (1)(4) *reads*

> *For the purposes of this Decree, the burden of producing evidence means the obligation of a party to introduce sufficient evidence to avoid a ruling against him on the issue. (4) In other circumstances the burden of producing evidence requires a party to produce 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.*

The onus is thus on Plaintiff to adduce sufficient evidence to prove his case. He called one witness Opanyin Kwesi, who is referred to as PW1 in this document. The Defendant called no witnesses.

PLAINTIFF'S CASE

It is the Plaintiff's case that he was a teacher but is now unemployed. He contracted Defendant to construct a container and gave the specification as 3 plates at the sides and 4 plates front and back. Defendant charged GH₵2,400.00 but Plaintiff negotiated the price to GH₵1,900.00.

On 22nd February, 2021, Defendant collected an amount of GH₵1,500.00 from Plaintiff and promised to complete the container in March 2021 but failed on his promise. According to Plaintiff, he informed Defendant that he contracted a loan to pay for the initial deposit and continued to be on the heels of Defendant to complete the container so Plaintiff could work.

When in May, 2021 Defendant had not completed the container, Plaintiff lodged a complaint before PW1.

In response to the complaint before PW1, Defendant said he charged Plaintiff GH₵2,400.00 but Plaintiff said he will pay GH₵1,800.00. To the PW1 the mediator, the parties did not conclude on the price and so urged the parties to share the cost of the loan but Defendant refused. PW1 then suggested that the parties share the difference between the GH₵2,400.00 Defendant quoted and the GH₵1,900.00 Plaintiff offered to pay. The parties agreed on this measure. The Defendant promised to finish the container by September 2021 but then reneged again on his promise hence the instant action.

DEFENDANT'S CASE

It is the Defendant's case that he is a welder from whom Plaintiff, his neighbour requested a container. Defendant gave the price for two sizes: 12 x 12 at GH₵2,400.00 and 12 x 16 at GH₵2,900.00. Plaintiff offered to pay GH₵1,800.00 for the 12 x 12 but Defendant rejected that offer.

Defendant collected an amount of GH₵1,500.00 from Plaintiff at his house and told Plaintiff he would start with his container after completion of three other containers.

Sometime in the June and July 2021 rainy season, Plaintiff asked about his container and Defendant told him he has not been able to complete it owing to the rains and power outages. In spite of the explanation, Plaintiff lodged a complaint against Defendant before PW1.

According to Defendant, Plaintiff had told Opanyin Kwesi that the parties agreed on GH₵1,800.00, but in his response, Defendant said he charged Plaintiff GH₵2,400.00 out of which he paid GH₵1,500.00 leaving a balance of GH₵900.00.

PW1 asked Plaintiff how much he was prepared to add to enable Defendant to complete the work and he responded GH₵300.00. This amount was unacceptable to Defendant because he had used the GH₵1,500.00 to procure materials for a 12 x 12 container.

Defendant told PW1 that if Plaintiff wants the 12 x 16 container, then he will have to pay extra so that he can finish it quickly. It was then that Plaintiff told Defendant that he contracted a loan to make the initial payment and so wants Defendant to pay for the interest. Defendant refused this suggestion because Plaintiff did not inform him he was going for a loan to pay for the container.

ANALYSIS OF ISSUES

1. WHETHER OR NOT THE PLAINTIFF IS ENTITLED TO THE GH₵3,000.00 INTEREST ON THE LOAN OF GH₵1,500.00.

The law is that he who avers must prove. In the High Court of Owusu v. Tabiri and Anor [1987–88] 1 GLR 287, Mensah J, held in holding (2)

> *"It was a trite principle of law that he who asserted must prove and must win his case on the strength of his own case and not on the weakness of the defence."*

Plaintiff claims he informed Defendant sometime in May that the GH₵1,500.00 initial payment was a loan. From his affidavit in support of his claim, Plaintiff has stated that the loan attracts interest of GH₵200 per month but there is no evidence to support this claim.

In his book, Essentials of the Ghana Law of Evidence, Justice Bobbey JSC. (retired), pronounces on adduction of evidence at page 29 with reference to Section 11(1) of the Evidence Act, *supra.* For purposes of clarity, I refer to Section 11(1)(1) below

> *"For the purposes of this Decree, the burden of producing evidence means the obligation of a party to introduce sufficient evidence to avoid a ruling against him on the issue. (4) In other circumstances the burden of producing evidence requires a party to produce 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."*

The retired justice of the Supreme Court referred to Random House Webster's Unabridged Dictionary 2nd Edition, at page 1544, to *"produce" means to "to bring into existence, give rise to … to provide, furnish, or supply."*

In the instant case, I find that the issue of the loan was made by Plaintiff without any documentary proof or oral testimony from anyone who could attest to the fact that Plaintiff contracted a loan. Assuming without admitting that Defendant got to know from PW1 that the money was a loan, it still does prove that fact because PW1 only repeated what Plaintiff had told him that the money was a loan. As the authorities suggest, Plaintiff ought to "produce" "furnish or "supply" sufficient evidence to establish the fact of the loan. Having failed to establish the facts of the loan, the issue of interest on the loan becomes mute and for that reason, issue 1 fails.

2. WHETHER OR NOT DEFENDANT BREACHED THE AGREEMENT TO CONSTRUCT A CONTAINER

The law is that where there is a breach of contract, the party who suffered as a result of the breach is entitled to damages. See the High Court case of Ekuona Construction Co. Ltd. v. Bank For Housing And Construction [1992] 2 GLR 227.

It is noted that from the evidence before this court Defendant accepted to construct the container for Plaintiff sometime in February last year. I find from the Defendant's evidence that he gave uncertain periods he would begin the job. Under cross-examination, Defendant asserted he gave Plaintiff May June as completion time. Then answered as follows when Plaintiff asked the question.

> *Q. – How long were you going to take to finish the project?*
>
> *A. – I told Opanyin Kwesi that it is the raining season and so I could not work at the time. However, I need the rest of the money to finish the work.*

It is also noteworthy that Defendant never made mention of the inadequacy of the money as a reason for the delay of the job until Plaintiff lodged the complaint with PW1. The issue of inadequacy of funds arose when Defendant insisted that Plaintiff ordered a 12 x 12 container size for the price of GH₵2,400.00. An assertion Plaintiff disputes.

I find from PW1's evidence that there was an indication that Plaintiff ordered a 3 plate x 4 plate container and the delay in its completion was a cause of worry for Plaintiff. A further indication was that there was no witness to the negotiation between the parties. Defendant however confirmed receipt of the GH₵1,500.00 from Plaintiff. It is further noted that Defendant never asked for any balance after receipt of the GH₵1,500.00. PW1 therefore concluded that the parties did not agree on the price of the 3 x 4 plate container.

According to PW1 in order to settle the issue he urged the parties to share the difference in the price of the 12 x 16 which Defendant gave as GH₵2,400.00 and for which Plaintiff had offered to pay GH₵1,900. According to PW1, Defendant agreed to bear GH₵300 and Plaintiff GH₵200 to make up for the difference of GH₵500. After this agreement,

Defendant pleaded that because it was the rainy season he needed more time to complete the job.

Sometime later Defendant informed PW1 he had started the work and needed the rest of the money. PW1 then decided to inspect the container but upon inspection, he realised that Defendant was not working according to the specification agreed on with Plaintiff. Instead of the 3 x 4 Defendant was working on a 3 x 3 plate. Plaintiff had a look and dissatisfied, commenced the instant action in spite of PW1's efforts to dissuade Plaintiff from taking legal action.

When it was time to cross PW1, Defendant declined the opportunity.

In Danielli Construction Ltd. v. Mabey & Johnson Ltd. [2007-2008] 1 SCGLR 60 at 65 the Supreme Court per Ansah JSC said

> *"The Plaintiff company did not cross-examine the witness of the defendant company in the witness box when he gave the evidence; the Plaintiff company did not also tender an evidence to challenge the veracity of the evidence … and the inference was that it admitted the import of the evidence."*

By law, it is deemed that Defendant admitted PW1's evidence in chief when he declined to cross-examined him.

Section 80 of the Evidence Act *supra* states:

(1) Except as otherwise provided by this Decree, the court or jury may, in determining the credibility of a witness, consider any matter that is relevant to prove or disprove the truthfulness of his testimony at the trial.

(2) Matters which may be relevant to the determination of the credibility of the witness include, but are not limited to the following:—

> *(a) the demeanour of the witness;*

(b) the substance of the testimony;

(c) the existence or non-existence of any fact testified to by the witness;

(d) the capacity and opportunity of the witness to perceive, recollect or relate any matter about which he testifies;

(e) the existence or non-existence of bias, interest or other motive;

(f) the character of the witness as to traits of honesty or truthfulness or their opposites;

(g) a statement or conduct which is consistent or inconsistent with the testimony of the witness at the trial;

(h) the statement of the witness admitting untruthfulness or asserting truthfulness.

PWI appears older than the parties, and the courtroom experience gives me the impression that the parties accord him some respect. I am of the opinion that PW1 displayed absolute candour devoid of bias. From this court's point of view, PW1 is a credible witness and I have no cause not to uphold, totally, the substance of his testimony.

Section 10 of the Evidence Act *supra* states

1) For the purposes of this Decree, the burden of persuasion means 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.

(2) The burden of persuasion may require a party to raise a reasonable doubt concerning the existence or non-existence of a fact or that he establish the existence or non-existence of a fact by a preponderance of the probabilities or by proof beyond a reasonable doubt.

Both Plaintiff and Defendant have adduced evidence in support of their claims. Upon evaluation of their evidence, I am persuaded by Plaintiff's evidence that he requested the

3 x 4 size container and negotiated the price down to GH₵1,900.00. I am also convinced that the parties agreed before PW1 to share the difference in cost of GH₵500. The Defendant failed again to complete the container even after asking for more time to do so. He later asked for the rest of the money to complete the container.

In my view, the Defendant's issue of inadequate money was an afterthought that he capitalised on to shift attention from what I believe has been an unjustifiable delay in completing a specific task, a 12 x 16 and not a 12 x 12 container he had begun. I find that the incompletion of the container the 12 x 16 container amounts to a breach of the agreement between the parties.

The Plaintiff's request for the container was to enable him to engage in some work since he was no longer into teaching. There is evidence that he was on the heels of Defendant to complete the container as scheduled but Defendant kept shifting the deadline.

In the case of Juxon-Smith v. KLM Dutch Airlines [2005-06] at 445 Georgina Woode JSC, as she then was, held

> *"Where a party sustain a loss by reason of a breach of a contract, he is so far as money can do it, be place in the same situation with respect to damages, as if the contract had been perform."*

In the instant case, Defendant's failure to complete the container for Plaintiff to enable him to engage in some work might have occasioned some loss to him and therefore ought to be compensated for the loss. In order to measure the quantum of damages to award there ought to be some guideline to assist the court.

In Arkorful v. State Fishing Corporation [1991] 2 GLR 348 the High Court in holding (2) held

> *"On the authorities, where a servant had been wrongfully dismissed from his contract of employment, damages were to be measured by the amount of salary which the servant had*

been prevented from earning by reason of the wrongful dismissal. The plaintiff was therefore entitled to (i) all his salaries calculated from the date of his interdiction to the date of judgment; (ii) payment of three months' salary in lieu of proper notice; and (iii) all his end of service awards calculated from the date of his interdiction up to the date of judgment. The calculation of his entitlements should be reckoned on the substantive post he held at his dismissal. He was also entitled to damages for prospective loss of promotion and loss of employment. He had been kept out of his employment for over ten years. If he had stayed in his job he would have earned his promotion."

In the above case, the court was able to measure the quantum in monetary terms to award the Plaintiff because it had a basis and figures to work with. In the case herein, Plaintiff neither adduced evidence on the kind of work he intended to engage in nor gave projections on profits or earnings. The court is therefore bereft of any benchmark to measure the quantum of damages to award Plaintiff for loss of earnings or profit on his intended business.

It is said 'Delay defeats equity'. It is a known fact that prices of some materials and goods have gone up by over a hundred percent in recent times owing to recent happenings globally which have impacted negatively on our economy.

In spite of the court's inability to measure the quantum of damages, I will award a nominal damage of GH₵500.00 to the Plaintiff for loss of earnings over the period.

In the Supreme Court case of Sowah v. Bank For Housing And Construction & Another [1982-83] GLR 1324 Taylor JSC at 1359 stated

"I propose to be guided by my initial inclination, for I am persuaded by the apparent modern approach of the English courts to the view that since the money was due at one point in time and it is now being paid at a subsequent point in time, the interest which the money attracts during the period assuming that it is a loan is, inter alia, a fair yardstick by which to measure to some extent the damages so suffered by the appellant."

I find that Plaintiff has not benefited from the GH₵1,500.00 Defendant collected on 22nd February 2021. For that reason, Defendant is to pay Plaintiff, interest on that amount from 22nd February, 2021 till the date of payment of the principal sum.

Cost of GH₵500 in the cause against Defendant.

H/W Juliana S.P. Mensah (Mrs.)
District Magistrate