

**IN THE DISTRICT COURT, HELD AT GOASO ON THE 17<sup>TH</sup> FEBRUARY, 2022**  
**BEFORE HER WORSHIP MAGDALENE THOMPSON DISTRICT MAGISTRATE**

**SUIT No. A2/29/20**

FOSU EMMANUEL

PLAINTIFF

VRS

YAA NKANSAH

DEFENDANT

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PLAINTIFF ABSENT

DEFENDANT PRESENT

ALBERT ZOOGAH FOR THE DEFENDANT ESQ ABSENT

PLAINTIFF UNREPRESENTED

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**JUDGMENT**

Plaintiff claims against the Defendant are as follows:

1. Recovery of cash the sum of GHc3,000.00 being balance of GHc11,000.00 in respect of Metal Gate Defendant bought from Plaintiff about 3 months ago.
2. Interest to be assessed at the current bank rate for the past two years till time of payment
3. Costs

Defendant did not file any defence and pleaded not liable to the claims by the Plaintiff.

## **PLAINTIFF EVIDENCE**

This is a civil case filed by the Plaintiff on the 19<sup>th</sup> November, 2020 against the Defendant herein. The Plaintiff case was that the Defendant contracted him to make a metal gate and barristers in her house wall for her. According to the Plaintiff the entire work was estimated at GHc11,000.00 and the Defendant made part payment of GHc8,000.00 that when the work is fully completed she will pay the remaining balance of GHc3,000.00. He contended that the Defendant refused to pay the balance upon persistent demands hence the court action.

The Plaintiff called two witnesses PW1 (Oppong Samuel) who corroborated plaintiff assertions that he entered into contract with the Defendant to mould a metal gate for her of which they negotiated and agreed on a fixed price of GHc11,000.00 which the Defendant made part payment of GHc8,000.00 to the plaintiff.

According to PW2 (Adjei Patrick) who is the Defendant's brother introduced the Plaintiff to his sister for the metals gate works and also confirmed that after the final negotiation the parties agreed on GHc11,000.00 as total cost of the metal works that includes the main metal gate, veranda barrister and metal fence gate. He testified that Defendant made an initial part payment of GHc8,000.00. He further adduced that they followed up to the Plaintiff's workshop to see the progress of the work and they saw that the Plaintiff has completed the main gate and the veranda barrister and left with only the metal fence that the Plaintiff has not started. According to PW2 at the Plaintiff's workshop he told the Defendant that the other gate has flowers designs, so in order to beautify the house the Defendant should let him do designs for the metal fence which he has not started and that will incur additional cost. He reiterated that his sister the

Defendant gave him GHc1,880.00 for only the flowers metal fence designs to be given to the Plaintiff.

### **THE CASE OF THE DEFENDANT**

It is the Defendant case that she needed some metals works to fix for her main gate and walls and told PW2 about it and he brought the Plaintiff who is a welder and introduced him to her in the house. Defendant then corroborated the Plaintiff and his witnesses assertions that they agreed on a total price of GHc11,000.00 for the metal works and made part payment of GHc8,000.00 in presence of the Plaintiff's witnesses of which the Plaintiff promised to give the Defendant a good and nice designs for the metal works. According to the Defendant the conveyance of the finished work to her house was also factored into the agreement during the negotiation and the Plaintiff promised to complete the works within two weeks but failed. According to the Defendant because the Plaintiff delayed the work then followed up to the workshop and they realized that the Plaintiff has completed the main metal gate, small gate and that of the three metal fence. She testified further that when she inquired about the delay Plaintiff told her that he was fixing another new design so the Defendant should add additional amount of GHc2,000.00 to the price but she refused to accept that because she was left with a balance of GHc3,000.00 and that was not the initial agreement they had. She told the court that she made further payment of GHc1,800.00 and gave it to PW2 to be given to the Plaintiff. She again added that the Plaintiff came for GHc200.00 and gave GHc150.00 to another welder to complete some of the Plaintiff's unfinished work as he has refused to complete same. That she was left with a balance of GHc3,000.00 to pay to the Plaintiff.

The legal issues that falls for determination are:

- (a) Whether or not the parties enter into contract agreement of GHc11,000.00?

(b) Whether or not Defendant has made part payment of GHc10,000.00 to the Plaintiff?

(c) If so does the conveyance fee of GHc200.00 form part of the total agreement fee?

(d) Whether or not Plaintiff is entitled to the reliefs endorsed on his writ of summons.

It is well known in civil trial that, the legal or persuasive burden is the burden borne by the party, who will lose unless he satisfies the tribunal of fact to the appropriate degree of proof and the burden of persuasion requires proof by a balance of probabilities as per **Section 12 of Evidence Act 1975 (NRCD 323)**.

In the case of **ADWUBENG V. DOMFEH [1996-97] SCGLR 660**, the Supreme Court held that in all civil actions, *“the standard of proof is proof by the preponderance of probabilities, and there is no exception to that rule”*.

In the case of **BANK OF WEST AFRICA LTD. V ACKUN [1963] 1GLR 176-182, S.C.**, Sarkodee-Addo JSC stated: *“..... The party who in his pleadings raises an issue essential to the success of his case assumes the burden of proof . . . The issue must be proved by the party who alleges the affirmative in substance, and not merely the affirmative in form.”*

**Cross examination that ensued between the Plaintiff and PW2 by the Defendant’s counsel:**

Q. You admit that the Defendant made part payment of GHc8, 000.00 not so?

A. Yes

Q. So how much was left then?

A. It was left with GHc3, 000.00.

Q. You see the Defendant made further payment of GHc1, 880.00 to you?

A. Yes

Q. So when you add GHc1, 880.00 to the GHc8,000.00, how much is that ?

A. It will be GHc9, 880.00.

Q. The GHc11, 000.00 you charge was inclusive of everything you were to do for the Defendant?

A. No

Q. I am putting it to you that the GHc11, 000.00 that you charge was inclusive of conveyance?

A. No.

Q. When you brought it you were paid GHc200.00 by the Defendant?

A. She gave the GHc200.00 to the Driver not me.

Q. So it is not true that the Defendant made only payment of GHc8, 000.00?

A. The GHc1, 880.00 is not part of the GHc8, 000.00 but rather is for extra designs.

**PW2 Answered as follows:**

Q. This GHc11, 000.00 included conveyance of the goods to the Defendant place?

A. I don't know that arrangement.

Q. And out of this GHc11, 000.00 the Defendant made part payment of GHc8, 000.00 and you are aware of it?

A. Yes I am aware of that.

Q. Then if you add GHc8, 000.00 to GHc1, 880.00 to GHc200.00 to GHc150.00 its gives you GHc10, 230.00?

A. All that I know is the GHc8, 000.00 and GHc1, 880.00.

Q. I am putting it to you that in their agreement the plaintiff told the defendant that he the plaintiff will select the design for the works. I am putting it to you?

A. Yes the plaintiff told me that.

I shall now examine and evaluate the evidence adduced by the Plaintiff in support of this case and the Defendant defence within the context of their respective burdens as I have stated earlier in this judgement to enable me resolve the issues before me.

From the evidence on record Plaintiff adduced that he has only received GHc8, 000.00 as part payment from the Defendant from the GHc11, 000.00 as agreed price for the metal works but the GHc1, 880.00 which he received from PW2 through the Defendant was for the extra designs he later charged for the flowers design and this was corroborated by PW2 who sent the money but the Defendant rebutted that the GHc1,880,00 she gave to PW2 to be given to the Plaintiff was additional payment of the GHc11,000 as she adduced during cross-examination. However, in the Defendant's own evidence which was corroborated by the Plaintiff evidence that she was left with GHc3,000.00 as a balance she is to pay to the Plaintiff even though denied in her cross examination that she did not give GHc1,880.00 to the PW2 to be given to the Plaintiff. The Defendant says that the GHc1,880.00 that she gave to PW2 to be given to the

Plaintiff is part of the payment of the GHc11,000.00, then why is she saying she is still left with GHc3,000,00 as a balance to be paid to the Plaintiff? Plaintiff adduced that it is the Defendant who gave the GHc200.00 conveyance fee to the trycircle driver which does not form part of the agreement fee.

The court can also glean from the evidence that the Defendant paid that GHc1, 880.00 through PW2 to the Plaintiff for the extra design of the flowers work because in her own evidence she told the court that the Plaintiff demanded extra fee for the flowers design of GHc2, 000.00 of which she refused but failed to adduced in her evidence whether she gave that amount to PW2 to be given to the Plaintiff. If that is so then GHc8,000.00 plus GHc1,880.00 will give us GHc9,880.00. If you subtract GHc9,880.00 from GHc11,000.00 it will give you GHc1,120.00 but not GHc3,000.00 as Defendant adduced in her evidence, This means that the GHc1,880.00 is an extra charge the Defendant paid for the flowers design and thought the Plaintiff is a timorous soul that she can come to the court to throw dust into the court eyes that that money she paid form part of her agreement fee.

On the other hand, the Plaintiff was able to prove his case on the balance of probabilities that he has only received GHc8, 000.00 from the GHc11, 000.00 fee he charged for the metal works but the GHc1, 880.00 which the Defendant failed to lead sufficient evidence to tip the scale in her favour was the extra cost the Defendant paid for the flowers design through PW2. This clearly shows that the Defendant payment of GHc1, 880.00 was for the additional flowers design the Plaintiff demanded as an extra payment. If that is so then the Defendant still owes the Plaintiff GHc3,000.00 as a remaining balance of the agreed fee of GHc11,000.00.

In the case of **YAKUBU V YAKUBU [2013] 55 GMJ 97 CA AT PAGE 135** per KORBIEH J.A. and Brobbey JSC it was held that: *“the law is that when the evidence of a*

*party is corroborated by the evidence of his opponent, then the court ought to accept the evidence.”*

When a court is called upon to resolve conflicting versions of facts, the duty of the court is distilled in a crucial question articulated by Wood CJ in the case of **SARKODIE V. FKA CO. LTD [2009] SCGLR 65 @ PAGE 69** in these words: “.....*The main issue for the court to determine is simply that, on a preponderance of the probabilities, whose story is more probable than not?*’ That question put differently is – whose evidence had more weight and credibility?”

In the circumstance, I enter judgment in favour of the Plaintiff for the recovery of the sum of Three Thousand Ghana cedis (GHc 3000.00) as remaining balance of GHc11,000.00 agreement fees.

A cost of GHc500.00 awarded in favour of the Plaintiff.

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**H/W MAGDALENE THOMPSON**  
**DISTRICT MAGISTRATE**