IN THE DISTRICT COURT HELD AT KUKUOM ON FRIDAY 9TH OF DAY OF DECEMBER, 2022 BEFORE HER WORSHIP AKUA OPPONG-MENSAH (ESQ)

SUIT NO A2/9/23

AKOSUA PEMESEYE **PLAINTIFF**

VRS

MADAM SEKINA **DEFENDANT**

JUDGMENT

BACKGROUND AND FACTS: The facts of this case are not complex in nature. The Plaintiff sometime in July 2022, sold a consignment of maize valued at a sum of GH¢750 to the Defendant on credit. The Defendant, in consonance with the agreement, undertook to render payment for same within three days from the date of the transaction. The Defendant however failed to honour her promise to pay the sum of GH¢750 to the Plaintiff much to the chagrin of the Plaintiff. The Plaintiff therefore, on the 31st day of October, 2022, instituted the instant action to recover cash the sum of GH¢750.00 being the cost of maize the Defendant purchased on credit from her in the month of July, 2022.

The main issues for determination are

(i) whether or not the conduct of the Plaintiff amounts to breach of contract; and (ii) whether or not the Plaintiff is entitled to recover the sum of GH¢750.

EVIDENCE AT THE TRIAL

PLAINTIFF'S CASE

The Plaintiff's case is that around June this year (which is at variance with the month stated on the relief endorsed on the Plaintiff's writ of summons) the Defendant approached her and negotiated with her for the purchase of maize on credit. The Plaintiff in her evidence to the court, however stated that due to the Defendant's conduct of reneging on her obligation to make payment for a previous consignment of maize, she was reluctant to enter into an agreement to sell the Defendant the goods on credit as the Defendant owed her GH¢100 from the previous transaction.

The Plaintiff testified that her daughter Christiana Boakye, however, impressed upon her to allow the Defendant to purchase the goods on credit. The Plaintiff testified that based on her daughter's assurance she parted with a consignment of maize valued at GH650, and gave same to the Defendant who undertook to pay for same within three days.

The Plaintiff, in her evidence further testified that after the lapse of three weeks she approached the Defendant for payment. The Plaintiff asserted that this was not out of malice, but because she had gone to credit the maize from some traders at Goaso, who were threatening to take legal action against her. The Plaintiff further stated that she visited the Defendant's house on at least 20 occasions, but on each occasion, the Defendant did not express any willingness to pay, but rather told one story after the other, and again insisted she would pay back in the cocoa season, when she had sufficient funds.

The Plaintiff stated that she did not relent but requested that her daughter, Christiana Boakye (who testified in this suit as PW1), plead with the Defendant on her behalf to settle

the outstanding amount of GH¢750 owed her, but the Plaintiff paid no heed to her daughter.

The Plaintiff further stated that the Defendant after borrowing the money did not cease to ply her trade, but had been carrying on brisk business, she (the Defendant), however unwittingly avoided her and proceeded to buy maize for her corn and cassava dough from other traders, all in a bid to avoid settling the sum owed to the Plaintiff, for the maize she purchased on credit.

The Plaintiff further alluded to the fact that the Defendant at some point, delegated someone to plead on her behalf for ample time to settle the sum owed for the maize, due to sickness, which she viewed as a mode by which the Defendant was shirking her responsibility of settling the sum owed, as at no point did she see the Defendant sick.

The Plaintiff finally stated that she therefore sought recourse in the court to recover the sum of owed to her by the Defendant to pay back her creditors who are bent on taking legal action against her to recover their monies from her.

After the conclusion of her testimony, the Plaintiff called one witness, Christiana Boakye (PW1) to testify in support of her claim.

EVIDENCE OF PW1

PW1, Christiana Boakye , the daughter of the Plaintiff, in her evidence to the court, stated that she was well acquainted with the Defendant who was related to her husband and also someone with whom she conducts business.

PW1's evidence was that in or around July or August, 2022, the Defendant came to the Plaintiff's residence and requested to purchase the Plaintiff's maize on credit. PW1 stated at the material time a bag of maize was valued at GH¢325. PW1 further asserted that the Plaintiff was hesitant in releasing the maize to the Defendant on credit because of an earlier encounter the Plaintiff had with the Defendant. PW1 stated that she however pleaded on behalf of the Defendant, and convinced the Plaintiff to sell the maize to her on credit. PW1 stated that based on her plea, her mother, the Plaintiff released 2 bags of maize valued at GH¢650 to the Defendant on credit.

PW1 further stated that the Defendant promised to pay back the amount in two weeks' time, and assured them that as business was booming, she could therefore settle the amount within a short period of time without any hindrance.

PW1 stated that about a month later, the Plaintiff came to her residence and informed her about the Defendant's refusal to pay her the amount owed for the purchase of the maize, contrary to the promise made by the Defendant.

PW1 again alluded to the fact that when the Plaintiff reported the Defendant's conduct to her, she promised the Plaintiff that she would entreat the Defendant to pay back her money to her.

PW1, finally stated that despite impressing upon the Defendant at least four times to settle the sum owed, the Defendant paid no heed, hence, the present action.

DEFENDANT'S CASE

The Defendant's case is that although she admits owing the Plaintiff, her failure to pay the sum owed to the Plaintiff was not deliberate, but was occasioned by bouts of sickness which impeded her from settling the sum owed within a reasonable time.

The Defendant in her evidence to the court stated that she commenced doing business with the Plaintiff about six years ago, and that around August, 2022, she received a consignment of two bags of maize valued at GH¢650 on credit, with the understanding that she would make full payment for the maize within two weeks. The Defendant however stated that she couldn't honour her promise, as she fell ill after picking up the consignment. The Defendant further asserted that after two months elapsed, she requested one Afia Frema to accompany her to the Plaintiff, to entreat the Plaintiff to give her an additional bag of maize, so that she could use the proceeds to offset the debt, but the Plaintiff refused. The Defendant further testified that she further requested Afia Frema to plead on her behalf three days later, but the Plaintiff remained adamant about supplying the maize to her. The Defendant further testified that soon after this, she was served with a writ of summons and fell on one Mr. Obeng, her sister's husband and her paternal uncle BB, to plead with the Defendant on her behalf, but the Plaintiff made it clear, that as the case was in court, she was not interested in amicable settlement and would prefer that the matter be determined to its final conclusion.

WHETHER OR NOT THE CONDUCT OF THE DEFENDANT AMOUNTS TO A BREACH OF CONTRACT

The first germane issue for consideration is whether or not the conduct of the Defendant can be construed as a breach of contract.

The question for the court then is whether the failure of the Defendant to settle the sum owed within the stipulated time amounts to a breach of a fundamental term of the contract, and ultimately is a clear breach of contract between the parties.

On what connotes a breach of agreement, the court in the case of Augustina Engmann vrs Pelican Group Limited SUIT NO. CM/BDC/0414/16, decided on 23 NOV 2018, the court, per Eric Kyei-Baffour J (as he then was) quoted the definition by Professor Treitel in his book "The Law of Contract where he stated that "A breach of contract is committed when a party without lawful excuse fails to perform what is due from him under the contract, or performs defectively or incapacitates himself from performing".

This is essence suggests that where a party without legal justification or reasonable cause fails to perform their obligations under a contract or fails in their bounden duty to effectively execute a contract, that person can be said to be in breach of contract in law.

Again, Samuel K.A. Asiedu J (as he then was) in the case of Cecelia Nketia v Alex Violet Kuma HIGH COURT · SUIT NO. BDC/10/2015 · 22 DEC 2017 in eludicating on a breach of contract, relied on the case of Social Security Bank Ltd v. CBAM Services Inc. [2007-2008] SCGLR 894, where the court held that: "A breach of fundamental or essential term is one of the grounds upon which a contract may be terminated. Where this is the stated ground, and the allegation that the term is essential or fundamental is disputed, a court is bound to determine the issue as a primary fact. But a contract may also be determined where, as in this instant case, the innocent party is empowered by the terms to terminate. A breach of an obligation in a contract that would, of necessity, call for an election on the part of the non-offending party to exercise his right of determination in the contract, must

fit into any of the following situations: (i) that which goes to the whole root of the contract and not merely to part of it; or (ii) that which makes further performance impossible; or (iii) that which affects the very substance of the contract.

The question for the court then is whether the time for the performance of a contract affects the very substance of the contract. The courts have held that where parties to a contract agree that an act should be performed by either party on a specific date, and either party fails to perform their obligation on that date, such conduct amounts to a breach of contract.

This sound legal principle was extrapolated in the case of ***Ben Yaw Obeng v State Housing Company Limited, Suit No H1/148/06, delivered on 17th April, 2008,*** where the court stated that time generally is considered to be of the essence, in a contract and that a party who fails to complete or perform the contract on the agreed date will be in breach.

From the evidence adduced at the trial, the Defendant failed to perform her obligation within the time frame agreed by the parties. Notwithstanding the fact that the Defendant stated that the time stipulated for her to have settled the sum owed was two weeks (a fact which was confirmed by PW1) and not three days as the Plaintiff alluded to, it is evident that the Defendant did not perform the contract in due time as expected.

Although, it is apparent that the Defendant failed to pay the Plaintiff for the maize purchased on credit within the time frame negotiated on by the parties, the court is clothed with the duty of ascertaining if the Defendant has reasonable grounds for failing to perform her part of the contract.

The Defendant contends that her failure to pay the Plaintiff was not malicious neither was it in a bid to deprive the Plaintiff of what is due her but was due to bouts of sickness, which incapacitated her from performing the contract.

The Defendant, however, apart from making a bare assertion that she was ill did not proffer any cogent evidence to show that she was suffering from any ailment.

The law is however settled that a mere assertion without proof would not suffice.
This principle of law received judicial mention in the case of ***Lydia Akwandua Quarcoo v Alhaji Baba Salifu Suit No FAL/191/14*** , the court cited with approval, the following proposition from the case of ***Zabrama v. Segbedzi (1991) 2 GLR 221 CA***

"The correct proposition is that a person who makes an averment or assertion, which is denied by his opponent has the burden to establish that his averment or assertion is true. And he does not discharge this burden unless he leads admissible and credible evidence from which the fact or facts he asserts can properly and safely be inferred. The nature of each averment or assertion determines the degree and nature of that burden."

Furthermore, from the Defendant's own testimony, two months after she had obtained the consignment of maize from the Plaintiff, she requested for her business partner, one Afia Frema to entreat the Plaintiff to give her one more consignment of maize in order for her to use same to conduct her business to offset the debt. Therefore it is more probable than not that she was in tip-top shape and had recovered , that is, if she had indeed been under the weather (as she claimed), and therefore had no reasonable ground for failing to perform her part of the obligation.

The court therefore finds that the Defendant breached the contract, and the Plaintiff is therefore entitled to repudiate the contract and seek a remedy for the breach.

WHETHER OR NOT THE PLAINTIFF IS ENTITLED TO THE SUM OF GH¢750

The final issue for determination is whether or not the Plaintiff is entitled to the sum of GH¢750. The Plaintiff, per her claim asserted that she was entitled to a sum of GH¢750 being the cost of maize the Defendant had purchased on credit sometime in July 2022.

It however emerged at trial, that the maize the Defendant purchased on credit in the month of July, 2022 or thereabout, was to the tune GH¢650, a fact which was corroborated by the Plaintiff's own witness, PW1. In the case of ***Sol Lueshing Company v Adeleke Oyinlola, Captain of MV Soleushing, Suit No OCC25/2013***.delivered on 14th July, 2017, on the implication of a material fact been corroborated by an opponent's witness, relied on the case of ***Osei Yaw v. Domfeh (1965) GLR 418 at 423*** *on corroboration where the court opined:*

"where the evidence of one party on an issue in a suit is corroborated by witnesses of his opponent, whilst that of his opponent on the same issue stands uncorroborated even by his own witnesses, a court ought not to accept the uncorroborated version in preference to the corroborated one, unless for some good reason (which must appear on the face of the judgment) the court finds the corroborated version incredible or impossible."

The Plaintiff however contends that prior to entering into this present contract with the Defendant for the purchase of two bags of maize, the Defendant owed her a sum of GH¢100

The following ensued in cross-examination

Q I am suggesting to you that about two years ago, you credited my maize from my sister Arko, although I told her not to sell to you on credit, she did not heed to my warning and went ahead to credit maize which is GH¢240 to you.

A. That is not correct, the goods that I took from Arko, in total was GH¢300, and that amount of money has been paid.....

Q I am suggesting to you that your grandmother Maame Yewaa even intervened to pay the GH¢300 during the cocoa season last year, your grandmother brought GH¢200 in my absence, remaining GH¢100, and that has been added to the GH650

A I instructed my grandmother not to pay the GH¢100, because the quantity of maize that I came for from Arku, was the exact amount that was paid by my grandmother and so I cannot pay you the GH¢100

Consequently, though the Defendant denies owing the Plaintiff prior to this instant transaction, it was however uncovered at trial that the said debt was paid back by the grandmother of the Defendant, and not to the Defendant herself (a fact which the Defendant did not dispute) in cross-examination.

The court observes that the Defendant's conduct by purchasing maize on credit and not demonstrating any remorse and omitting to pay same but rather causing her grandmother to pay off the debt on her behalf and even instructing her grandmother not to pay the full GH¢300, suggests that on a balance of probabilities, she was aware that she owed the Plaintiff, the outstanding sum of GH¢100 and reneged on her obligation to pay.

It is not in doubt that for the consignment of maize received by the Defendant sometime in July 2022, the Defendant owes the Plaintiff, a sum of GH¢650.

The Defendant, indeed, admitted same during trial. It is trite learning that when there is admission of a fact by a party there is no need to make a further enquiry to establish proof.

In the case of ***Amofa Kofi Kusi v Unicredit Ghana Limited, delivered on the 29th of July, 2019,*** Justice Richmond Osei Hwere , on this point relied on the case of ***Samuel Okudzeto Ablakwa and Anor v Jake Obetsebi Lamptey and Anor (20132014) 1SC GLR 16,*** where the court stated that where a matter is admitted proof is dispensed with, *as it is no longer in contention* (emphasis mine).

Now that it has been established that the Defendant owes the Plaintiff a sum of GH¢650, the question for the court is whether the Plaintiff can claim the additional GH¢100 she included in her writ, although it was in respect of a previous transaction.

The court in determining this focal point, rests on the shoulders and foundations of equity. The court where it deems it prudent would apply the principles of equity in coming out with its decisions. In the case of ***Gateway Worship Centre v David Soon Boon Seo Civil Appeal NO: J4/12/2008 21 JAN 2009***, the court on application of the principles of equity stated that the position of the law in Ghana, is that it is well established that every court in Ghana is a court of both common law and equity.
The Court further relied on the of ***Bou-Chedid v. Yalley [1976] 2 GLR 258***, where Archer J.A. (as he then was) preferred at page 264

"Notwithstanding the vicissitudes of the courts in Ghana since they were established about a century ago, no one will venture to suggest that throughout this period separate courts have administered the common law and equity in Ghana.

It is a sound maxim of equity that he who comes to equity must come with clean hands. The Plaintiff has not muddled or tainted, herself in any illegality, but is merely seeking for restitution for a lawful business transaction, she entered into with the Defendant. The

court applying the golden principles of equity is of the view that the Plaintiff is entitled to an additional sum of GH¢100 The court is of this opinion because, the sum of GH¢100 being claimed in court by the Plaintiff was as a result of a transaction, which even though it is distinct from the present contract between the parties, took place a year ago, and legal claim for same is not statute barred by the Limitation Act, 1972 (NRCD 54).

Section 4(1)(b) of the Limitation Act, 1972 (NRCD 54) provides:

4. Actions barred after six years

(1) A person shall not bring an action after the expiration of six years from the date on which the cause of action accrued, in the case ofb) an action founded on simple contract;

Therefore, although the sum of GH¢100 was from an outstanding debt of a distinct transaction, once the Plaintiff was not barred from bringing an action in contract, the court applying the rules of equity finds that the Plaintiff is entitled to recover the sum of GH¢750 from the Defendant.

CONCLUSION.

In civil trials, the standard of proof required for a party to prove the veracity of his claim in court, is proof on the balance of probabilities. This is codified under our law under 12 (1) and (2) of the Evidence Act, 1975 (NRCD 323) which provide:

Section 12—-Proof by a Preponderance of the Probabilities.

(1) Except as otherwise provided by law, the burden of persuasion requires proof by a preponderance of the probabilities.

(2) "Preponderance of the probabilities" 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.

The concept of preponderance of the probabilities was described in the case of **ESTHER KUDZORDZIE V.MAJOR NELSON AGBEKO** (2010) SUIT NO: BFA 59/08 · 15 DEC 2010 · GHANA, in the following terms by J "My understanding of the present state of the law is that in assessing the *balance* of probabilities, all the evidence, be it that of the plaintiff and the defendant must be considered and the party in whose favour the balance tilts is the person whose case is more probable and he wins.

The court considering, the evidence adduced by the parties, finds that on the balance of probabilities the Plaintiff's version of events is more probable.

Furthermore, the evidence of the Plaintiff was further corroborated by her witness, PW1 who essentially confirmed the claims of the Plaintiff, that the Defendant with whom the Plaintiff had contracted with and sold maize to her on credit, had intentionally and without any plausible defence in law, omitted to make payment to the Plaintiff.

The court in the case of J.K. Ackah v Francis Eghan, Civil Appeal No. H1/56/2010, delivered on 9th April, 2014, where the court stated that "to a lay man corroborate can simply mean to support or substantiate pieces of information. To corroborate a piece of evidence may also mean not authenticate it by giving an additional supporting or supplementary evidence as back up. In the legal parlance corroboration is confirming, enforcing and re-inforcing evidence supporting another evidence of the same fact. Corroborative evidence is not a repetition of the evidence, but a confirmation of the evidence by an independent testimony.

PW1 confirmed the claim of her mother by asserting through independent testimony that the Defendant entered into transaction with the Plaintiff for which she was to make payment for the goods parted with by the Plaintiff, but failed to perform her contractual duty to pay for the goods within two weeks from receipt of same.

The Plaintiff was magnanimous in her claim before to seek only the recovery of the sum of GH¢750 owed to her by the Defendant with any further reliefs. The court however is of the view that due to inflation and owing to the fact that the Defendant has deprived the Plaintiff of her fruit of labour due to a fundamental breach. The court deems it fit to award general damages to cushion the Plaintiff for her losses and also to grant costs to the Plaintiff as costs for instituting the suit.

Judgment entered for the Plaintiff in the sum of GH¢750 owed to her by the Defendant. General damages of GH¢250 for breach of contract awarded to the Plaintiff against the Defendant. Costs of GH¢100 also awarded to the Plaintiff as costs for instituting the present action.

SGD.

AKUA OPPONG-MENSAH ESQ.

DISTRICT MAGISTRATE