

**IN THE DISTRICT COURT HELD AT KUKUOM ON THE 17TH DAY OF
APRIL, 2023 BEFORE HER WORSHIP AKUA OPPONG-MENSAH (ESO)**

SUIT NO. A2/34/22

NANA ABEAM ADDAI DANSO **PLAINTIFF**

VRS

1. ALEX NRUMAH **1ST DEFENDANT**

2. AFIA BADU **2ND DEFENDANT**

BACKGROUND AND FACTS: The brief facts of the case are that the Plaintiff, in or around , 20th April, 2019 (which it emerged at trial was the 13th of June 2018), was approached by the 1st Defendant for financial assistance of Six Thousand Ghana cedis , which the 1st Defendant promised to repay by 30th April, 2019. Pursuant to their agreement, a written agreement, setting out the salient terms and conditions of the agreement was prepared and duly executed by the Plaintiff and 1st Defendant and the 2nd Defendant, who acted as a guarantor.

The 1st Defendant however defaulted in payment of the sum borrowed as agreed to by the parties in the agreement. The 2nd Defendant who undertook to repay the sum borrowed in the event that the 1st Defendant defaulted in payment also reneged on her obligation under the agreement.

The Plaintiff therefore on the 15th day of March, 2023, instituted the present action for

- a. Recovery and refund of cash, the sum of Six Thousand Ghana cedis

(GHC6000) being the financial assistance the Plaintiff gave to the 1st Defendant in and around 20/04/2019 of which the 2nd Defendant was a guarantor.

- b. An interest on relief „A“ from 20/04/2019 till date of final payment.
- c. Cost

The 2nd Defendant on her appearance in court on the 23rd of March, 2023 pleaded liable to the Plaintiff's claims. The 1st Defendant on the other hand did not appear in court, and as it was apparent that it was impracticable to serve him the court made an order for substituted service for him to appear before the court to prove his claim on 14th April, 2023.

The 1st Defendant however failed to appear in court to defend the action on 14th April, 2023, so the court pursuant to order 25 r 1(2) of C.I.59 directed the Plaintiff to enter the witness box to prove his claim.

ISSUES

The focal issues for determination are

- (i) whether there was a valid contract
- (ii) whether or not the conduct of the 1st Defendant amounts to a breach of contract

THE PLAINTIFF'S CASE

In essence, the case of the Plaintiff is that sometime in the year 2019 the 1st Defendant approached him for financial assistance of GHC6000, and an agreement was broached that the amount loaned should be repaid within a month. The

Plaintiff asserted that a promissory note was prepared and duly executed by the 1st Defendant and the 2nd Defendant who was to act as a guarantor and repay the sum owed

in the event that the 1st Defendant default in payment. According to the Plaintiff, per their initial agreement the sum was to be repaid by the end of April, 2019, as the 1st Defendant had undertaken to repay the amount within a month and had borrowed the sum of GHC6000 sometime in March 2019. The Plaintiff however alluded to the fact that when the 1st Defendant prepared the agreement he had incorporated a clause which stated that he was to pay the amount by December, 2019 and not April, 2019 as agreed upon. The Plaintiff stated that he then questioned the 1st Defendant as to why he had made those changes, but the 1st Defendant explained that he had a sick father, whom he had the responsibility of taking care of, so Plaintiff obliged him and a consensus was reached that the payment was to be made by December, 2019. The Plaintiff, in concluding his evidence in court stated that he had earlier told the court that the agreement was entered into in March, 2019, but per the agreement it was rather on the 13th of June, 2018, so he wished to withdraw his earlier statement concerning the date. The Plaintiff then tendered in a Promissory Note dated 13th June, 2018 as Exhibit A in support of his case, in conclusion of his evidence

ISSUE

The first issue for determination is whether or not there was a valid contract between the Plaintiff and 1st Defendant. The court in determining this issue considers what constitutes a contract.

A contract, in essence, refers to an agreement, between two or more parties which is legally enforceable and for which consideration is provided, barring any issues of capacity or illegality.

Again, as a matter of principle, the terms and obligations must be clear between the parties, and a mere proposition of entering into a contract would not suffice.

In *Baher Fattal v Emmanuel Oko Tei (Jnr.)* Civil Suit No: H1/15/2016 delivered on 2 Feb 2017, the Court of Appeal relying on the locus classicus of *IBM World Trade Corporation Ltd V. Hansem Enterprise Ltd [2001-2002] SC GLR 393* surmised that an agreement was to be certain as to its essential terms to be construed as enforceable as a contract in law.

Furthermore, Evan McKendrick QC, a learned professor of English Private Law in the University of Oxford in the 12th Edition of his book on Contract Law (2017) at page 92 stated that:

“in order to create a binding contract, the parties must express their agreement in a form which is sufficiently certain for the courts to enforce.

The contours of the agreement entered into by the meet the requirements of a valid contract, the obligations of the parties were clearly set out in the agreement as well as the time frame within which the contract was to have been performed

Therefore there is a valid contract between the parties enforceable at law

ISSUE 2

WHETHER OR NOT THE 1ST DEFENDANT’S CONDUCT AMOUNTS TO A BREACH OF CONTRACT

The second and final issue for determination is whether or not the conduct of the 1st Defendant amounts to a breach of contract entitling the Plaintiff to a remedy in law.

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 in 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.

The 1st Defendant per the terms of the contract was to have fulfilled his obligations under the contract by rendering full payment of the sum of GHC6000 by December, 2018, but blatantly failed to do so without any lawful justification to the detriment of the Plaintiff.

The courts have held that where parties to a contract agree that an act should be performed by a party on a specific date, and that party fails to perform their obligation on that date, such conduct amounts to a breach of contract.

This long-held 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.

In the light of the foregoing, the 1st Defendant’s omission in repaying the debt he owed within the scheduled time frame amounts to a breach of contract.

As may be gleaned from the evidence buttress his claims in court, the Plaintiff provided documentary evidence which in a plethora of cases has been found by the courts to be of greater weight than oral evidence as was proffered in the case of *Agyei Osae and others v. Adjeifio and others* (2007-2008) 1 SCGLR 499 that:- “whenever there was in existence a

written document and conflicting oral evidence, the practice of the Court was to lean favourably towards the documentary evidence

Based on the evidence adduced by the Plaintiff, in a nutshell the Plaintiff is entitled to judgment on relief(s) (a),(b) and (c)

Judgment is entered in favour of the Plaintiff against the Defendants, jointly and severally on reliefs (a) and (b)

- a. Recovery and refund of cash, the sum of Six Thousand Ghana cedis (GHC6000) being the financial assistance the Plaintiff gave to the 1st Defendant in and around 20/04/2019 of which the 2nd Defendant was a guarantor.
- b. An interest on relief „A“ from 20/04/2019 at the prevailing bank rate till date of final payment.

On relief (c) costs of GHC600 is awarded against the 1st Defendant. No order as to costs against the 2nd Defendant.

SGD.

AKUA OPPONG-MENSAH

DISTRICT MAGISTRATE