

**IN THE DISTRICT COURT HELD AT ADANSI ASOKWA ON MONDAY THE 9<sup>TH</sup>  
DAY OF OCTOBER, 2023 BEFORE HER WORSHIP LINDA FREMAH ADOM  
OKYERE, ESQ.**

**SUIT NO. A2/10/2023**

**ADWOA BOAMAH**

**V**

**KWAME OPOKU**

**JUDGMENT**

The Plaintiff had engaged the services of the Defendant to fell some logs for her. She advanced some sums of money to the Defendant for the work to be done. According to the Plaintiff, she did not receive all the logs she paid for and that she had been informed by PW2 that the Defendant had sold off the rest of the logs. She brought the instant Writ of Summons to recover the amount of GHC. 2,000.00 which she claims per her particulars of claim represents 120 beams worth of wood together with the carriage of same. She also claimed for interest and cost.

The Defendant on the other hand avers that, he indeed worked for the Plaintiff and that some monies were advanced to him by the Plaintiff for the work to be done. However, he disputes that he sold the logs off to another person. His defence to the claim is that the logs were left in the forest because of the rains.

In order to determine whether or not the Defendant owes the Plaintiff the GHC. 2,000.00 which the Plaintiff is claiming, the burden of proof needs to be allocated. In civil cases as this one, this onus of proof is on the preponderance or balance of probabilities as stated in **Section 12 of the Evidence Act, 1975 (Act 323)**.

It is also trite learning that, generally, a person who is making a negative averment does not have to prove the negative averment. The Plaintiff makes that negative averment of having not received the logs she paid the Defendant to supply to her. The

burden therefore rests on the Defendant to demonstrate on the balance of probabilities that he executed his part of the bargain by supplying the logs to the Plaintiff or in the case of the contrary, that he has a good legal defence to justify why the logs were not supplied to the Plaintiff.

By the provisions of **Section 11(1) and (4) of the Evidence Act, 1975 (Act 323)** the duty or obligation or the burden of producing evidence is on the party against whom a ruling on that issue would be given if he failed to lead sufficient evidence.

Section 11 (1)(4) provides as follows:

*“(1) 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.”*

In his attempt to discharge this burden on him, the Defendant called DW1 to testify in his favour. The evidence of DW1 is that he was also paid by the Plaintiff to fell logs for her. According to Defendant himself, it was necessary to involve DW1 to fell the logs because his own chainsaw machine had developed a fault. DW1 claims that he did fell the logs for supply to the Plaintiff. He states further in his evidence that he knew that there were 55 logs left in the forest at the time the Plaintiff complained to him about not receiving some of the logs she had paid for. There is nothing that DW1 said which suggested that the logs were delivered to the Plaintiff.

The Defendant is on record to be saying this, *“I told the Plaintiff to pay for carriers to transport the logs. Plaintiff gave me GHC. 500.00 through PW2 for the carriers.”*

Clearly, the Plaintiff performed her part of the agreement but the Defendant failed to show that the logs were delivered to the Plaintiff as agreed especially since he himself

had admitted receiving money for the carriage of the logs to the Plaintiff. It is my view that the Defendant failed to discharge the evidential burden on him.

The Defendant stated in his evidence that whilst he had made arrangement for the logs to be carried to the Plaintiff, the Plaintiff caused a tricycle rider to transport 125 beams of wood from the forest for her. The Plaintiff admits this assertion by the Defendant save that she claimed she rather caused 124 beams of wood to be transported to her. The Plaintiff claims that the value of the remaining logs which the Defendant was supposed to deliver to her was GHC. 2,000.00 representing 120 beams of wood.

The Defendant on the other hand averred that he and the Plaintiff never entered into accounts. Having admitted that he received varying amounts from the Plaintiff for the advancement of the work which monies he stated in his evidence and also during cross examination, the Defendant still stated during cross examination that he did not know the total amount of money he received in the course of the business transaction with the Plaintiff. He stated thus:

“Q. How much money did I give you?

A. I do not know the total amount”

Considering the evidence before me, I am inclined to accept the Plaintiff’s version of the facts in respect of the outstanding balance.

On claim (b), it is trite learning that one of the grounds for the award of interest is that a person who has unjustifiably kept money which properly ought to have gone to its owner should not in justice be permitted to benefit by having that money in his possession and additionally enjoying the use of it. This principle of law was established in the case of **London, Chatham & Dover Railway Co. v South Eastern Railway Co. [1893] AC 429 at 437, HL** which was applied in **Holland West Africa v Pan African Trading Co. [1976] 2 GLR 179 at 183.**

The case of **Akoto v Gyamfi-Addo [2005-2006] SCGLR 1018** also established that unless there is justification for keeping the money, interest is payable.

I find that the Defendant has kept the Plaintiff out of the use of her money from January 2023 without any justification.

By reason of the foregoing, judgment is entered in favour of the Plaintiff as follows:

- a. Recovery from the Defendant of an amount of GHC. 2,000.00 being the total amount representing 120 beams of wood which the Defendant failed to supply to the Plaintiff upon payment by the Plaintiff to the Defendant.**
- b. Interest on the said GHC. 2,000.00 from January 2023 till date of final payment at the prevailing commercial bank rate.**
- c. Costs of GHC.1,000.00 against the Defendant.**

**SGD**

**MRS. LINDA FREMAH ADOM OKYERE, ESQ.**

**DISTRICT MAGISTRATE**

**09/10/2023**