IN THE DISTRICT COURT HELD AT OSINO

ON THURSDAY THE 11TH DAY OF JULY, 2023

BEFORE HIS WORSHIP AYAGIBA SALIFU BUGRI

DISTRICT MAGISTRATE

CASE NO. . A2/05/23

COMFORT ARKOH ……. PLAINTIFF

OF ABOMOSO

VS

ADWENPA CO-OPERATIVE

CREDIT UNION ……. DEFENDANT

PER THE PRINCE (MANAGER)

OF OSINO

JUDGEMENT

Reliefs sought:

1. Recovery of six thousand, six hundred Ghana Cedis Ghc6,600 from defendant being balance of susu contribution and processing fees with Adwenpa co-operative credit union, Osino branch
2. Interest on Ghc6,600 from time of payment to final payment
3. Costs

Brief facts:

Plaintiff is a farmer residing at Abomoso and has an account with Adwenpa co-operative credit union, whilst defendant is a manager of the Adwenpa co-operative

credit union also resident in Osino. Plaintiff says she joined the credit union on 11 December 2022 with the intention of securing a financial loan. Plaintiff operates two accounts with the credit union to wit, 'susu' account and business account respectively. Plaintiff says she applied for a loan of Ghc20, 000 but was informed she could only afford Ghc10, 000 at the time, even though plaintiff believes she had qualified for the amount applied. Plaintiff decided that she was no longer interested in saving with the credit union and asked that her account be closed.

Issues for determination

1. Whether or not there was an offer and acceptance
2. Whether or not plaintiff is bound by the terms of her contract with defendant
3. Whether or not defendant took the necessary precaution in entering into a contract with an illiterate party

Per an article online, CREDIT UNION LOANS IN GHANA- What you should know; "A credit union is a form of financial institution, just like a bank. The difference is that the members of the credit union own it. It operates as a non-profit entity that aims to serve its members rather than seeking to earn a profit. Employees and people of the same interest usually come together to form the credit union to serve the best interest of members. As part of the requirements to be a member, members must have something in common to join the credit union. On the other hand, some credit unions will require that one pay a small fee to become a member, if the first requirement cannot be met".

"Because credit unions major goal is to serve their members, they do not prioritize profit over the full satisfaction of their members. They help their members with the money that would have been profit. Besides that, the members of a credit union enjoy

better interest rates on their savings and have lower interest rates on the loans they get from their unions".

"In Ghana, credit unions are a popular way for people, especially in rural areas, to save money without having a bank account. They also provide credit to borrowers and at a much lower interest rate than commercial banks".

The above provide a brief and yet deep background of the activities of credit unions in Ghana. Defendant Company is in this category and the above is to provide an understanding of the relationship and transaction that took place between plaintiff and Defendant Company.

It is in the evidence of both the plaintiff and defendant that the reason plaintiff opened an account with the credit union was to secure a financial loan. According to defendant, plaintiff had even disclosed that she closed her account with a previous bank because she was unhappy with their services. Thus, the money she took from that bank upon closing her account was handy and that was what she used to open an account with defendant.

According to defendant, modalities and requirements of opening an account with the credit union was explained, and forms filled on behalf of plaintiff respectively, at her instance after plaintiff said her friend had testified to the credit unions credibility.

It is apparent that plaintiff obtained an initial loan of GHc3, 000 per her susu account, which she paid off in order to secure a much larger amount. Plaintiff intended to apply for GHC20, 000 but her susu account could not afford her that amount. In other words, plaintiff had not met the criteria to qualify for that amount under her susu account, notwithstanding the directions accorded her by the manager of the credit union.

By their evidences, it is clear that the parties had intensions of entering into a legal relationship. Clearly, there was an offer and acceptance. However, there was a condition precedent that plaintiff was to satisfy in order to qualify for the loan that she intended to obtain. The condition was that, plaintiff must have at least GHC6000 in her susu account in order to meet the requirement for one to qualify for a loan of GHC20000. Notwithstanding her efforts plaintiff could not meet the condition and decided to withdraw what she had saved so far. Unfortunately, it was not possible for one to withdraw more than GHC1000 at a time from the susu account. To assist plaintiff withdraw that amount upon her insistence, GHC4000 was transferred from her susu to business account, which she operated with defendant.

An offer is an indication or a statement of the terms on which an individual is willing to be bound by way of an agreement. If an offer is accepted it stands, and an agreement comes into existence between the parties concerned.

An offer must be communicated to an offeree before he can accept it. Therefore, if an offeree is unaware of an offer but does something tantamount to an acceptance of that offer, then in law he cannot be said to have accepted the offer by his conduct since an offer cannot be accepted by a person until that offer is known by that person.

An offer may be express by writing, orally or implied by the conduct of the person concerned.

In my opinion, if plaintiff had not met the criteria to afford her a loan on her susu account, it meant it was not possible for the contract to be performed or executed. The condition precedent was material to the capability of the contract being performed. Thus even though both parties had the intention of engaging in the contract there was a vitiating factor that rendered the contract of not capable of being performed. On the other hand, Whether or not plaintiff qualifies for the amount she sought from the credit

union is within its knowledge, since plaintiff operates an account with it and her financial credibility is within their knowledge. Obtaining information from plaintiffs account, whether susu or business should not be problematic to the credit union since it is the account holding institution or branch. It is not information that the credit union has to solicit from a third party or another financial institution.

From the definition and activities of credit unions aforementioned, plaintiff ought to have a much flexible process of obtaining a loan. The procedure for applying for a loan is not as rigorous as with commercial banks. The reason for all the explanation and education to plaintiff by the manager of the credit union was to ensure that she appreciates the need to meet the criteria of obtaining a loan on her susu account. It is clear that plaintiff had been directed by defendant to save to the tune of GHC6000 on her susu account to meet the criteria for the amount she sought, and payment of GHC800 as processing fee, which was not refundable.

Per the evidences before me, plaintiff paid GHC120 as processing fee for the first GHC3000 loan that she obtained on her susu account with the credit union. Based on the above, my understanding is that, after one has successfully applied and granted a loan with the credit union, the amount is credited to the customer before a processing fee is demanded. This is evidenced by a question posed by defendant to plaintiff during cross-examination. Q. "It was when we brought you the GHC3000 that the GHC120 was deducted as processing fee, true or false?" Ans. "True". I find it rather difficult to believe that it is after the money is credited to plaintiff that the processing fee is deducted. One cannot deduct after giving out. Hence, I tend to rely on the weight of plaintiffs evidence that she paid the processing fees out of the GHC3000 that was handed her. I observed that defendant was inconsistent with this narrative as to whether plaintiff paid the processing fee before or after receiving the first loan. Indeed,

it is obvious that this trivial issue is essential in the determination of the processing fee of GHC800 that that plaintiff is asking defendant to refund.

Again defendant stated in his evidence that; "Two weeks later we paid GHC3000 to plaintiff. We informed plaintiff she would pay processing fees of GHC120. Plaintiff pleaded that we waive the processing fees initially until the loan was ready. However, it was wrong per our procedures. Thus plaintiff paid cash of GHC120 before the loan amount was released to her".

An ordinary person can easily infer from defendants testimony that whether or not plaintiff received her loan two or three weeks after her application for the first loan, the processing fee was demanded from her at the point of releasing the GHC3000. By my understanding as submitted by defendant, it was wrong per policy and procedure of the credit union, but waived in the case of plaintiff. By extension even though the loan had been approved and granted, the money would not have been released to plaintiff if she had not paid GHC120 in cash to cure the anomaly.

Once there is that understanding between the parties that the processing fee is not refundable, it will not lie in the mouth of any loan applicant or customer to ask for a refund whether the application is successful. In the instant case, it is not clear if the plaintiff was educated on this at the time she expressed interest in the first loan, except that the terms and conditions to apply for a loan per susu and business accounts are different. I am also of the fervent view that defendant was aware it was dealing with an illiterate for that matter. Therefore, whatever processes she was put through needed the presence of a third party to affirm that the process has been read and explained to plaintiff in a language that she understood and accepted it.

By not doing so, defendant had not met the standard in dealing with illiterate customers. By that, defendant's dealing with customers in the category of plaintiff is akin to being an investigator, prosecutor and judge in the same matter.

There is no doubt that by applying for a loan, plaintiff and defendant were committing themselves to a legal relationship and a contract for that matter.

The terms of a contract refer to the exact undertakings that the parties have agreed to carry out under the agreement. In other words, the terms refer to the conditions, stipulations or covenants that the parties have each agreed to be bound by under the contract. It is the reason the parties must be aware of the terms of the contract, and in the case of an illiterate, a jurat is indispensable.

It is not clear the form in which the application was initiated. However, the evidence suggests that most of what transpired between plaintiff and defendant was verbal. If there was any documentary evidence at all, it will be that completed by defendant on behalf of plaintiff, who is illiterate and definitely not have an appreciation of what is written, except to trust the defendant that their dealing is in good faith. After all, as a financial institution, the credit union has a fiduciary relationship with plaintiff. Even though defendant indicated that forms were given to plaintiff to fill when she applied for the second loan, it is not in evidence that filled the form(s). My inference from the submissions is that it was done by defendant on behalf of the plaintiff.

ACT 25, Section 11—Contracts Need not be in Writing Except in Certain Cases.

Subject to the provisions of any enactment, and to the provisions of this Act, no contract whether made before or after the commencement of this Act, shall be void or unenforceable by reason only that it is not in writing or that there is no memorandum or note thereof in writing.

Even though an offer was made to plaintiff, she did not meet the criteria to pass a consideration. Under the circumstances, plaintiff has the right to rescind the contract since it was difficult for her to perform her part by saving enough money in her susu account to qualify for a loan of GHC20, 000.

The terms of a contract form the basis upon which the parties agree to enter into a legal relationship. Where a party decides that he is incapable of executing his part of the contract, there is nothing preventing him from rescinding the contract. Where one party has performed his part, he can take an action against the other for specific performance or seek other reliefs that are available to him. In the instant case, it is not as if defendant had executed a part and plaintiff had failed. The condition precedent that plaintiff was required to meet could not be met. I wish to add that from the evidences adduced that, plaintiff had expressed her intention to obtain a loan of GHC20, 000 and defendant took her through the processes and conditions attached to obtaining loans per the respective accounts to wit, susu and business accounts. It is evident that the parties were still going through the processes that plaintiff was mandated to meet or satisfy. Hence, I find it difficult that a processing fee of GHC800 was paid upfront when plaintiff was still struggling to meet the requirement. Be that as it may that plaintiff had obtained forms to be completed, and by that had activated the loan application process, and bound to pay the processing fee, it was not so in the first loan she obtained. In that instance plaintiff paid the processing fee out of the cash paid to her, hence her difficulty to appreciate what has transpired in the second instance.

Whether as a rule, convention or usage, most financial institutions, deduct the processing fee from the amount that is credited to ones account. Therefore, for example if an applicant applied for GHC20, 000 it was not uncommon that the applicant will be credited with say 19,500. It is highly unlikely that a processing fee will be demanded from an applicant separately, after his account is credited with the amount. That

situation certainly opens the floodgates for fraudulent and corrupt practices by officers handling such portfolio. In that case, the processing fee is subject to what the officer releasing the loan says it is. Thus having waived the policy, and a procedural breach having been occasioned in favour of plaintiff to pay the processing fee after obtaining the loan, it is not plaintiffs fault to believe that, the same principle should not be accorded her on the second loan. Therefore, in the mind of the plaintiff if the loan was unsuccessful and not approved for that matter, there was no need to charge a processing fee. There is no doubt that defendant brought this upon itself and must take his victim as he finds him, especially when dealing with illiterate customers.

Rescission is a remedy in equity by which a person to a transaction may set aside the transaction. The general principle is that when a transaction is set aside, the parties are restored to the status quo ante. This means that they are restored to their previous positions as if the transaction never occurred or existed. The parties are deemed not to have entered into the transaction.

As parties are restored to the status quo ante, any benefits conferred on any of the parties must be returned. This is called restitution, which is sine qua non with rescission to prevent unjust enrichment.

Rescission is not made by a court. Rescission is ordered at the request of a party to a case. The court assesses the reasons advanced by the party to the rescission and if satisfied the order is made. The court only agrees with the party seeking rescission, after it has determined that there is a right to rescind.

The grounds for rescission are:

Contract ubberrimae fidei

Misdescription

Express right to rescind

Mistake

Misrepresentation

I have perused exhibit A and B to wit susu passbook and business account pass book. Indeed the susu pass book bare evidence of deposits and a few withdrawals made since 1st/12/2022 to 16th/06/2023 when the last transaction was recorded. In respect of the instant case, even though plaintiff said she made a withdrawal of GHC4000.00 on her susu account somewhere in March, the evidence shows that she made that withdrawal on 17th/02/23. On the said date GHC4005 was recorded as having been withdrawn leaving a credit balance of GHC1995. Deposits continued subsequently thereby positively affecting plaintiff's balances. There is no evidence of any other withdrawal of GHC4000 traceable to the last transaction date. On the other hand, on 15th/02/2023 an amount of GHC2000 was deposited in plaintiff's business account and GHC3000 withdrawn from it on 23rd/03/2023. The balance on both accounts as at their last respective transaction date is GHC5200 and GHC100 cedis respectively, to the credit of plaintiff.

From the above, I find defendant's explanation that GHC4000 was withdrawn from plaintiff's susu account into her business account credible. The date of the transaction as indicated by defendant is evident in the susu passbook. The fact that the transaction was recorded in a red pen, which differentiates it from all other transactions recorded in that passbook, gives credence to defendant's testimony that it was because plaintiff's business passbook was not available that the transaction was recorded in her susu passbook. Plaintiff has not denied that per the susu policy of the credit union, one can only withdraw GHC1000 at a time. Additionally, the appearance of GHC4000 as a one off withdrawal gives credence to defendant's testimony.

Notwithstanding the credibility of defendant's testimony, it is evident that the credit union breached its own policy in order to satisfy plaintiff, even though the breach was in good faith. Thus, if plaintiff relies on these breaches in two instances to have her way, one cannot fault her in any subsequent demands in that direction.

On the face of the records before this court and on the balance of probabilities of the evidences adduced, there is no seeming evidence that plaintiff has been short changed or taken advantage of because of her illiteracy. The balances on the face of the respective passbooks are the true reflection of the records.

If anything at all, defendant breached its own policy and is to blame for the misunderstanding. However, I am of the opinion that asking plaintiff to pay GHC800 as processing fee when plaintiff has not met the criteria for the amount she applied for is not fair.

Once plaintiff rescinded the contract because it was difficult to meet the criteria, it is only fair that she is restored with the amount of the processing fee that was paid up-front. My opinion on this would have been different if plaintiff was taken through the process in the presence of a witness or that she received an offer letter, stipulating all the conditions associated with such requests. In that case, the presumption is that the letter will be read to plaintiff by a literate wherever she finds one in addition to whatever explanation she receives from the loan officer.

Consequently, I order that the other half of GHC400 that the credit union retained following an attempt at amicable settlement at the instance of this court, constitutes unjust enrichment and plaintiff must be restored with the amount.

Accordingly, the first and second reliefs sought by plaintiff are dismissed.

Costs of GHC200 awarded to plaintiff.

HIS WORSHIP AYAGIBA SALIFU BUGRI,

MAGISTRATE