

IN THE DISTRICT COURT HELD AT OSINO ON WEDNESDAY THE 20<sup>TH</sup>  
AUGUST 2023 BEFORE HIS WORSHIP AYAGIBA SALIFU BUGRI, DISTRICT  
MAGISTRATE

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SUIT NO. A2/13/23

CYNTHIA ANIM

.....

PLAINTIFF

VS

1. RICHARD AHENKORAH

2. KOFI ASAMOAH

.....

DEFENDANTS

OF OSINO

JUDGEMENT

**Reliefs sought:**

1. Recovery of GHC7000 being financial assistance that plaintiff gave to the 1<sup>st</sup> defendant through the intervention of 2<sup>nd</sup> Defendant
2. Interest on the said amount since August 2022 until final date of payment
3. Costs

***Brief Facts***

Plaintiff is an administrative officer with Rollidor company in Accra and resident at Omanjor, a suburb of Accra. Defendant is a logistics officer at Ghana Education Service (GES), Osino in the Fanteakwa south district where he is resident. Plaintiff's case is that she dated D1 somewhere in 2005, but they broke up in 2008 due to reasons including financial issues. Plaintiff says she knows D2 through D1. Somewhere between 2013 and 2014, plaintiff and D1 met in Lapaz, a suburb of Accra and D1 suggested they rekindle their relationship but plaintiff declined because she was already with another man.

However, in 2022 they became friends on FACEBOOK and starting communicating again until they decided to rekindle their relationship. According to plaintiff, through their interaction, D1 said he intended to marry in 2023. He disclosed that he was working with GES and his financial situation unpleasant. Plaintiff disclosed that she was also putting up a residential accommodation and financially tight as a result, but they could assist each other since they are in a relationship. Sometime later, D1 requested financial assistance to purchase an airline ticket for his brother who had had scholarship to study abroad. Plaintiff assisted with Ghc2000 and told D1 that since it is meant for her building project, he had to pay back (a loan for that matter), and D1 agreed. According to plaintiff, D1 disclosed that he dated a lady in Tamale but the relationship hit the rocks because the lady reported to his church about a laptop and money that that lady gave to him. D1 added that his landlord offered his daughter for marriage but he declined because the lady was not economically engaged. Plaintiff says she observed that apart from financial requests, D1 ceased talking about their relationship and intended marriage, and will not pick up her calls after she honors the financial requests, except at the end of each month.

Plaintiff says she has sent so much money to D1 to feed but decided to waive recovery, except the money that she intended to expend on her building project. Plaintiff says even though she had decided not to honor D1's numerous financial requests, 18<sup>th</sup>/02/23 D1 called to say he had sold some A4 sheets that had put him in trouble and needed GHC2900 loan. D1 asked D2 to talk to plaintiff on his behalf in that and she obliged. Plaintiff says, she enquired how payment will be made and D1 said by monthly installments of GHC400 until it is defrayed. Subsequently D1 paid the first installment payment on 01/03/23 upon demand. D1 paid GHC300 on the second installment payment on 31/03/23 upon demand. Later D1 said an embargo has been placed on his salary hence he was unable to pay subsequent installment payment. Even though D2

offered to pay the defaulted installment on behalf of D1, D2 later said D1 had asked him not to. Plaintiff says she reported D1 to his church and they said such issues concerning D1 have come before it on several occasions. Notwithstanding several promises by D1 to pay her, he has not honored any of them.

Opening his defense, D1 testified corroborated plaintiff's testimony in respect of their relationship to the extent that it was plaintiff who suggested they rekindle their relationship. Additionally, he divulged the fact that he could not take care of plaintiff due to his financial constraints as expected in a relationship and plaintiff said since she was gainfully employed it was not a problem. D1 admitted that he calls plaintiff for financial assistance anytime the need arose and she willingly obliged. Sometimes plaintiff sends him money even when she has not requested and he appreciated her. Plaintiff admits that he went to Accra and spent the night at plaintiff's house but declined to be intimate due to his own principles. Plaintiff took issue for lack of intimacy for most part of their relationship coupled with his inability to visit her. Somewhere in January, plaintiff suggested they broke up because she thinks D1 is with her because of the financial gains. D1 says she obtained a loan of GHC2000 from plaintiff to pay by monthly installment payment of GHC400. Upon paying GHC400 and GHC300 for the first and second installments, embargo was placed on his salary by his employer. D1 says he informed plaintiff about to give him more time to repay his loan and she agreed. During the Easter holidays, plaintiff passed by his house and he showed his pay slip to her as evidence of his financial commitments and plaintiff promised to remit him monthly to feed. However, he suggested to plaintiff to offset/defray his loan commitment to her with whatever amount she intended to give him. D1 blames plaintiff's conduct on his refusal to be intimate with her.

D2 is a tutor at Osino Senior High and a colleague of D1 at GES. D2 says he knows plaintiff only through a phone call and on one Easter holiday. According to D2, he

confirmed to plaintiff that D1 had problems at his work place when she asked. D2 says he asked plaintiff to give any assistance she could. Between May and April, plaintiff called to inform him that D1 had refused to pay the loan. Due to excessive calls from plaintiff, D2 says he offered to pay one installment to plaintiff but D1 stopped him from paying subsequently. D2 says he is aware that D1 is on embargo and D1 had told him he was not sure when it will be lifted hence he asked him to stop any payment on his behalf. Later plaintiff called to issue threats that she will not allow D1 to take her money.

### ***ISSUES FOR DETERMINATION***

- 1. Whether or not there was a breach of promise to marry***
- 2. Whether or not plaintiff's financial assistance to D1 are gifts***

Since the parties took their respective oaths per the Bible, it will not be wrong for the instant court to assume that the parties are Christians. Under the circumstances, it is presumed that any marriage of the parties could be under customary law or under the ordinance (CAP 127). Thus, I limit my attempt to determine the issue of breach of promise to marry under the aforementioned modes of marriage in the light of the evidences adduced by the parties.

In his book, FAMILY LAW IN GHANA, Fifth Edition; William Offei describes customary marriage as a union between a man's family and a woman's family, and also a contract between a man and a woman.

Under the common Law; Halsbury defines marriage as a contract between a man and a woman by which they mutually promise to marry one another. The promise of each is

the consideration for the promise of the other. It is not necessary that the contract be evidenced by writing, nor even that the mutual promise be made by express words.

The conduct of the parties such as, the giving of an engagement ring, the fixing of a date for the marriage or their behavior towards each other, may justify an inference that they have mutually promised to marry, and in the case of a woman, it is sufficient to show that she acted in such a way as to indicate her consent to, and approval of, the man's promise on which an action can be founded.

Most often, a relationship is expected to end in marriage. Several promises go into a relationship before it concludes as marriage. The promises are, either fulfilled or not fulfilled. In law if someone fails to honor his promise to marry, it is a "Breach of Promise". The promise will become enforceable only if it meets the elements of a contract. Breach of promise to marry is when after a mutual agreement or one party proposing to marry the other, backs out of the promise after the other accepted the proposal. According to Professor Mensa Bonsu (Mrs.) JSC," An action for breach of promise to marry arises when a person makes a promise to marry another and refuses to perform. The refusal could be by conduct, or by an express refusal upon a request for performance". In her article; "The Action for Breach of Promise to Marry in Ghana: New Life to old Rule, she states that:". The circumstances under which a promise of marriage would be inferred must also be given considerable thought to solve two problems: Forestalling the situation of blackmail which discredited this action, and discouraging unscrupulous persons from taking advantage of others....."

Professor of Family Law in Ghana, Professor W.C. Ekow Daniels, has stated emphatically that; "It is now beyond question that actions for breach of promise of marriage under customary law are maintainable." It is thus the case that, where a man

or woman makes a promise of marriage to each other, and then fails to carry it through, it is a cognizable wrong, for which the court would give a remedy.

The court should give adequate protection to victims of modern day “Don Juans” who misuse and take for granted the largesse and courtesies extended to them by their concubines and their families. Parties must declare their intentions and define the relationship ipso facto. The only action for breach of promise to marry is an action for damages, and not a compulsion of one to marry the other. A court will not order specific performance in a breach of promise to marry.

In the instant case, there is no doubt from the evidences adduced by both parties that, they rekindled their relationship based on what both told each other. In the case of Plaintiff D1 said, he was still not married and intended to do so this year (2023).

Plaintiff who is currently single per her evidence relied on that information to believe that D1 was still available and they could get married if she assisted D1 financially. The fact that plaintiff knew about D1’s financial predicament was divulged to her by D1 as the evidence reveal. In the words of plaintiff, after they rekindled their relationship, they did not leave it at that. After all, it is not all relationships that end up in marriage and could as well been a relationship of convenience or a casual one for that matter.

However according to plaintiff; “D1 said he intended to get married this year. .... D1 asked what I did for a living and said he was now with GES and his financial situation not very pleasant. I told D1 I was also putting up a building and financially tight, however we could assist each other.” In the words of D1; “Plaintiff enquired why I was not married and I told her it was due to financial reasons. Days later plaintiff enquired if I wanted to be in a relationship with her. I told her I could not take care of her for reasons I already divulged to her. Plaintiff said it was not a problem and could assist me since she was gainfully employed. I told plaintiff I am ready if only she can assist me

financially and she agreed. From that time plaintiff sends me money even when I have not requested for it.

In my opinion, whether or not plaintiff or D1 initiated the relationship is immaterial. It is certain that the parties agreed to enter into a relationship as two consenting adults, knowing the consequences of their actions. Whether or not there was intimacy is immaterial. The deciding factor is the mutual agreement to enter into a relationship leading to marriage. Plaintiff's questions are clear to any reasonable man that she intended to be in relationship leading to marriage hence her enquiry about D1's marital status. All the financial assistance that D1 admits he benefited were due to the belief by plaintiff that she and D1 were going to be husband and wife in the near future. According to D1 plaintiff assisted him financially anytime he requested and even at her own free will when he has not made any financial requests. These were after, he agreed to the relationship, granted plaintiff assists him financially.

Even though D1 admitted spending the night at plaintiff's house at a time his brother was preparing to travel abroad, he failed to add whether or not he received money on the said visit following a request he had made on plaintiff. According to plaintiff, D1 had come to receive GHC2000 that he requested to assist his brother purchase an airline ticket.

Additionally, D1 admits that he borrowed GHC2900 from plaintiff and has paid GHC700 so far, leaving an outstanding GHC2200. Apart from this amount, D1 says he does not owe plaintiff since all other financial receipts were gifts. In this case D2 witnessed phone conversations during which D1 called plaintiff to borrow GHC2900. D2 confirmed the predicament that D1 was in hence pleaded with plaintiff to assist D1 if she could. D2's conduct cannot be interperated as a guarantee that D1 will pay back the loan and therefore to be held liable to pay if D1 defaults as plaintiff has. To the best

of my interpretation from plaintiff and D2's testimony, D2 only appealed to plaintiff to assist D1 if she had the ability and capacity to do so. It is also evident that D2 paid one installment on behalf of D1 when he defaulted. According to D2, he made that payment of behalf of D1, because of the incessant calls from plaintiff when D1 defaulted to honor his obligation to plaintiff. By that payment, D2 had not stood in the stead of D1 as far as D1's financial obligation to plaintiff is concerned. Thus joining D1 to the instant suit is necessary and a waste of D2's precious time.

It is trite law, that a gift made in contemplation of marriage may be recovered from, but not by, the party in breach. In *Jacobs v Davis*, Shearman J, held that a woman who had broken the contract must return the wedding ring, for it is in substance a pledge, given upon the understanding that a party breaking the contract must return it.

In the instant case apart from the money plaintiff gifted D1 willingly to feed, which she has not demanded, the ones she is attempting to recover from D1 are monies advanced to him as loans. Granted they are gifts, as D1 wants this court to believe, it is trite that gifts made in contemplation of marriage are recoverable. Similarly, having admitted that apart from GHC2900 that he borrowed from plaintiff, the rest are gifts, plaintiff is right to recover all those gifts through the instant action. It is evident that plaintiff gifted D1 those monies in contemplation of marriage. After all, it is in evidence that when the two separated in 2008 whilst plaintiff was still a student, there was no contemplation of marriage by either of them hence, plaintiff did not take an action. It was a casual relationship or one that none contemplated marriage. When the two met again in 2013-2014, plaintiff made it clear that she was with another when D1 suggested they rekindle their relationship, granted that is true. D1 did not deny any of these and the presumption is that plaintiff has been truthful. On the other hand, when plaintiff was free from marital obligations she disclosed that to D1 when the two made contact on FACEBOOK. Thereafter, they decided to rekindle their relationship. D1 has not denied



it. To this extent, I cannot see any malicious motive or intent for any unjust enrichment by plaintiff, except to recover her money from D1 whether or not for upon a breach of promise to marry or recovering a loan to D1. In either case D1 has a right to recover under the circumstances. Granted that plaintiff has taken the instant action as result of D1 refusing to be intimate with her, it is an admission that plaintiff made those monetary advances to D1 in contemplation of marriage, hence if there is a breach plaintiff has a right to recover her money. Indeed, there is no doubt that D1's action as observed by plaintiff and by the evidences adduced constitute a breach of promise to marry. The fact that D1 admits that plaintiff gifted him money to feed on several instances but failed to disclose the respective amount, and the fact that D1 failed to disclose whether he borrowed money from plaintiff to assist his brother travel abroad, raises issues about his credibility in this matter. I can infer from D1's testimony that he is being economical with the facts of the case as far as specific amounts are concerned. Granted D1 spent the night at plaintiff's house at the time his brother was travelling abroad, and decided not to be intimate with plaintiff because of his principles, what else was his objective or motive to visit plaintiff, if not for an interest which I can infer, is to receive money he had requested from plaintiff. To add to D1's credibility is, issues raised by plaintiff pertaining to his previous relationships. These are, their first relationship when she was a student at 19 years, D1's previous relationship in Tamale, the fact that his landlord offered his unemployed daughter to him for marriage, but he declined due to his financial woes, and because the lady was not economically engaged, and the fact that his church has intervened on several occasions on his issues. D1 has not denied any of these and in all, the common denominator for the failed relationship and intervention by his church is money. In the opinion of this court, there can be no other explanation to plaintiff's continuous financing of D1, except for the promise to marry her if she assists him financially. Therefore, if there is a breach, it is lawful to take the instant action to recover her money or gifts which incidentally financial in nature.

Consequently, on the balance of probabilities of the evidences adduced, I am convinced that D1 borrowed GHC2000 from plaintiff to assist his brother to travel abroad. I also am also convinced by all the other itemized bills per exhibit 'A', including those aforementioned.

I am also convinced that plaintiff has expended a lot of money on D1 to feed even though not documented or proved specifically. This court has no reason to doubt the authenticity of plaintiff's story based on her narrative and demeanor during the hearing process. Plaintiff was vivid, coherent, consistent in her narrative, whereas D1 was economic with the facts and avoided specifics. D1's defense was largely a blame of plaintiff's conduct on his inability to visit her in Accra and his principle not to get intimate with plaintiff.

After evaluating and analyzing the evidences adduced, I have made the following findings of fact:

- That plaintiff and D1 had been in a previous relationship
- That the parties rekindled their relationship after plaintiff divorced
- That D1 requested financial assistance from plaintiff as a basis for the relationship leading to marriage
- That plaintiff honored most of D1's financial requests

In conclusion, it is the opinion of this court that since plaintiff's inability to prove the amount expended on D1's feeding, an order to recover a specific amount cannot be made in that respect. However, to be fair to plaintiff, I order that GHC7200 owed to plaintiff as far as the evidences are concerned be settled by D1 to cater for all including amount expended on him for feeding.

Per Brobbey, Interest is the price paid by a borrower for the use of a lender's money. In *Riches v Westminster Bank Ltd* [197] AC390, HL Viscount Simon described interest as "the accumulated fruit of a tree which the tree produces regularly until payment".

As a general rule, interest is paid if the parties agree that interest must be paid, and the law will give effect to agreements genuinely and freely entered into.

"Where parties genuinely enter into monetary transactions and agree that it shall be free of interest, it is logical for the court to give effect to that agreement and refrain from ordering interest to be paid. Such an agreement will remain interest free so long as each party honors their side of the bargain. If a party has to recover the money owed through a court action, then the court is justified to order interest on the unpaid sum from the date it became due".

In the instant case, it is not as if plaintiff lent money to D1 to pay back with interest. This can be described as an interest free friendly transaction gone bad. Accordingly, I award nominal interest of GHC500 on the entire judgement debt, especially so when it is notorious that D1 is already financially constrained. It will be unconscionable to impose more financial stress and hardship on D1.

Costs of GHC300 awarded to plaintiff

**-SGD-**

**HIS WORSHIP  
AYAGIBA SALIFU BUGRI,  
DISTRICT MAGISTRATE**